Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

ROBERT C. SCHLOTZ AND CINDY J. SCHLOTZ,

Petitioners,

v.

HYUNDAI MOTOR COMPANY, A SOUTH KOREAN CORPORATION; HYUNDAI MOTOR AMERICA, INC., A CALIFORNIA CORPORATION; MITSUBISHI MOTOR SALES OF AMERICA, INC., A DELAWARE CORPORATION,

Respondents,

AND WALTER CARL ALBERS.

On Petition For A Writ Of Certiorari To The Minnesota Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Respondents manufactured and sold a car designed to have no lap belt and only a shoulder belt. Petitioner Robert Schlotz was severely injured in a crash because the car had no lap belt. Respondents claim that Mr. Schlotz's design defect claims are preempted under the National Traffic and Motor Vehicle Safety Act and its regulations. Mr. Schlotz asserts that because there is no specific regulation authorizing a no lap belt design, his common law claims are preserved by the savings clause, 15 U.S.C. § 1397(k), which provides that "[c]ompliance with any Federal motor vehicle safety standard . . . does not exempt any person from any liability under common law." Was it proper for the Minnesota Court of Appeals to ignore the plain meaning of § 1397(k) and preempt Mr. Schlotz's common law claims?

(2) Does a State violate the Equal Protection Clause by depriving individuals of a cause of action based upon a hypothetical State legislative purpose – protection from "state-mandated seat belts" – which no longer exists and which now conflicts with the Safety Act's express preservation of common law claims?

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OPINIONS BELOW

The opinion of the Minnesota Court of Appeals (App. 1-12) is reported at 557 N.W.2d 613. The order of the Minnesota Supreme Court (App. 13) denying review and the order of the state district court granting respondents' motion for summary judgment (App. 14-25) are not reported.

JURISDICTION

The Minnesota Court of Appeals issued its opinion on January 14, 1997. App. 1-12. The Minnesota Supreme Court entered judgment denying further review on March 26, 1997. App. 13. This Court has jurisdiction under 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

The National Traffic and Motor Vehicle Safety Act, as codified when the vehicle in this case was manufactured, provided in pertinent part:

> **15 U.S.C. § 1392(d). Supremacy of Federal standards; allowable higher standards for vehicles used by Federal or state governments.** Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety

standard which is identical to a Federal safety standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

* * *

15 U.S.C. § 1397(k). Continuation of common law liability. Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.

On July 5, 1994, Congress recodified the Act "without substantive change" (Pub. L. No. 103-272, 108 Stat. 745, 941). The new Code provisions, in relevant part, are as follows:

49 U.S.C. § 30103. Relationship to other laws.

(b) Preemption. (1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

* * *

(e) Common Law Liability. Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

All of the applicable preemption cases, including the decisions by the two courts below, discuss the provisions as codified before the 1994 recodification. This petition, therefore, uses the citations employed in those decisions.

STATEMENT OF THE CASE

On February 24, 1991, Robert Schlotz was driving his 1988 Hyundai-manufactured Precis northbound on Vicksburg Lane in Plymouth, Minnesota. Mr. Schlotz wore his 2-point seat belt (a single belt latched near Robert's right hip, crossing his chest diagonally, and latched near Robert's left shoulder in the door assembly). Mr. Schlotz had stopped to make a left hand turn into a shopping mall. Walter Albers, driving in the same direction, rear ended Mr. Schlotz, pushing Schlotz's car into oncoming traffic. A second car hit the front portion of the Schlotz car.

The first collision broke Mr. Schlotz's seat back and allowed Mr. Schlotz to "ramp up" the seat. The second collision threw Mr. Schlotz forward and into the seat belt which then ripped through his lower abdominal area, causing severe injuries.

Robert and Cindy Schlotz filed this state common law suit for strict liability against Hyundai Motor Company, Hyundai Motor America, Inc. and Mitsubishi Motor Sales of America, Inc. (collectively "Hyundai"), alleging

that the 1988 Hyundai was defectively designed because it lacked a driver's-side lap belt and that the seat back was defectively designed and manufactured.

When Hyundai manufactured Robert Schlotz's 1988 Precis, federal regulations promulgated pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§ 1381 et seq. ("the Safety Act") – specifically, Federal Motor Vehicle Safety Standard 208 – did not prohibit Hyundai from installing a lap belt in the Precis or any other car. Standard 208 did, however, require Hyundai to install some form of passive restraint in at least 10 percent of its 1988 model-year cars. 49 C.F.R. § 571.208. It also required all cars to have, at a minimum, either (1) a manual lap belt and shoulder harness, (2) an automatic belt system providing at least a specified level of protection in head-on crashes, or (3) an airbag or other device providing automatic protection in both head-on and angular crashes. *Id.* Hyundai chose the second option, installing an automatic belt system in the 1988 Precis, but did not include a lap belt with the system, although it was free to do so under that option. In this case, the Schlotzes allege that Hyundai acted negligently by failing to do more than the minimum that Standard 208 required.

Hyundai moved for summary judgment on federal preemption grounds, asserting that, even if Hyundai's actions violated Minnesota common law and caused Robert Schlotz's injuries, Hyundai is exempt from liability because it complied with Standard 208. Hyundai argued that the Schlotzes' claims are expressly preempted by the Safety Act's preemption clause, 15 U.S.C. § 1392(d), which provides, *inter alia*:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to

> continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

Hyundai also argued that Minn. Stat. § 169.685, subd. 4 – enacted in 1963 and known as the "seat belt gag rule" – barred the Schlotzes' common law crashworthiness claims.

The Schlotzes responded to the preemption argument by relying on the Safety Act's anti-preemption (or savings) clause, 15 U.S.C. § 1397(k), which provides: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." They contended that Congress' plain words precluded any finding of preemption and that, in any event, their claims simply did not conflict with federal law. The Scholtzes argued that the seat belt gag rule enacted three years before Congress enacted the Safety Act did not bar their common law claims. The Schlotzes also argued that application of the 1963 seat belt gag rule to bar common law claims which arose in 1968 would violate the Schlotzes' rights under the Equal Protection Clause in 1997 where the Safety Act and its federal regulations now mandate the appropriate standards and expressly preserve common law remedies.

The district court granted Hyundai's motion. The district court held that the Schlotzes' claims were impliedly preempted and that Minn. Stat. § 169.685, subd. 4 barred the seat belt claim and the defective seat back claim. App. 14. The court held that under *Anker v. Little*, 541 N.W.2d 333 (Minn. App. 1995), *rev. denied* (Minn. Feb. 9, 1996), the seat belt gag rule barred the crashworthiness claims. The court did not address the Schlotzes' Equal Protection challenges.

The Minnesota Court of Appeals affirmed the district court. The court of appeals rejected the argument that the Safety Act's anti-preemption or savings clause – § 1397(k) – barred implied preemption of common law claims. The court did not discuss this Court's preemption analysis in *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181 (3d Cir. 1986), *rev'd in part and aff'd in part*, 112 S. Ct 2608 (1992), *Freightliner Corp. v. Myrick*, 115 S. Ct. 1483 (1995), or *Medtronic Inc. v. Lohr* 116 S. Ct. 2240 (1996), but instead relied upon its own 1987 case involving a "no airbag" claim which pre-dated this Court's important preemption analysis. App. at 8-9 (relying upon *Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838, 840 (Minn. App. 1987), *rev. denied* (Minn. Feb. 17, 1988)). The court also found that the seat belt gag rule destroyed the Schlotzes' common law crashworthiness claims. Like the district court, the court of appeals did not address the Schlotzes' constitutional challenges to this application of the seat belt gag rule.

REASONS FOR GRANTING THE PETITION

When Congress enacted the Safety Act in 1966, it unequivocally stated the preemptive effect that compliance with a Federal safety standard was to have on common law liability: "Compliance with *any* Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. § 1397(k) (emphasis added). The Minnesota Court of Appeals' preemption decision contravenes these plain words and conflicts with the ruling of several federal appeals court and state courts of last resort which have addressed the preemption issue. In so doing, it both adds to and exacerbates the conflict that already exists among these courts on whether – and the extent to which – Congress' words preclude a finding that

common law claims are preempted. The Minnesota Court of Appeals' preemption decision also highlights the confusion created by this Court's decision in *Freightliner* about the Safety Act's preemptive effect. This decision incorrectly answers an important federal question that has not been, but should be, decided by this Court – whether Congress intended the Safety Act to preempt state common law claims. This Court should also grant certiorari to consider whether a State statute may be constitutionally interpreted to bar common law claims which did not exist when enacted, for a speculative legislative purpose – state-based protection of auto manufacturers – now controlled by the Safety Act and the common law.

This Court should grant review to resolve the conflict among the federal courts of appeal and state courts of last resort, eliminate the confusion caused by *Freightliner*, and decide whether Congress' words mean what they say.

I. There Is An Irreconcilable Conflict Among the Federal Courts of Appeal and the State Courts of Last Resort Over Whether the Safety Act Preempts Common Law Claims.

The Minnesota Court of Appeals' preemption decision expands and exacerbates the growing conflict among the federal courts of appeal and the state courts of last resort over the Safety Act's preemptive effect. Only this Court can end the conflict. If this Court does not step in, the conflict will only get worse, as the decision below reflects.

Congress enacted the Safety Act in 1966. During its first two decades, eight federal circuit courts and five state courts of last resort addressed whether compliance

with federal motor vehicle safety standards issued pursuant to the Safety Act exempts auto manufacturers from liability under common law. Some phrased the question as whether compliance with federal standards constitutes a defense; others asked whether compliance results in federal preemption. Each, however, reached the same conclusion: Congress' words mean what they say – "Compliance with any federal motor vehicle safety standard adopted under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. § 1397(k).

In the first such case to reach a federal court of appeals, *Larsen v. General Motors Corp.*, 391 F.2d 495, 506 (8th Cir. 1968), the Eighth Circuit stated:

> Section 108(c) of the Act, 15 U.S.C. § [1397(k)], expressly negatives any intention of Congress to acquire exclusive jurisdiction in this field and leaves the common law liability intact . . . It is apparent that the National Traffic Safety Act is intended to be supplementary of and in addition to the common law of negligence and product liability.

Accord Knippen v. Ford Motor Co., 546 F.2d 993, 1000 (10th Cir. 1976); *Fox v. Ford Motor Co.*, 575 F.2d 774, 778 (10th Cir. 1978); *Stonehocker v. General Motors Corp.*, 587 F.2d 151, 156-57 (4th Cir. 1978); *Dawson v. Chrysler Corp.*, 630 F.2d 950, 957-58 (3d Cir. 1980), *cert. denied*, 450 U.S. 959 (1981); *Dorsey v. Honda Motor Co. Ltd.*, 655 F.2d 650, 656-57 (5th Cir. 1981), *cert. denied*, 459 U.S. 880 (1982); *Schwartz v. American Honda Motor Co., Inc.*, 710 F.2d 378, 383 (7th Cir. 1983); *Sours v. General Motors Corp.*, 717 F.2d 1511, 1516-17 (6th Cir. 1983); *Shipp v. General Motors Corp.*, 750 F.2d 418, 421 (5th Cir. 1985); *General Motors Corp. v. Edwards*, 482 So. 2d 1176, 1198 (Ala. 1985); *Volkswagen of America, Inc. v. Young*, 321 A.2d 737, 746 (Md. App. 1974); *H.P. Hood &*

Sons, Inc. v. Ford Motor Co., 345 N.E.2d 683, 688 (Mass. 1976); *Arbet v. Gussarson*, 225 N.W.2d 431, 438 (Wis. 1976).

The courts, aware of the national implications of common law liability, concluded that Congress intended to preserve such common law claims. For example, in *Dawson*, 630 F.2d at 962-63, the jury found that a side-door design provided inadequate crash protection despite compliance with Standard 214:

> The effect of [15 U.S.C. § 1397(k)] is that the states are free, not only to create various standards of liability for automobile manufacturers with respect to design and structure, but also to delegate to the triers of fact in civil cases arising out of automobile accidents the power to determine whether a particular product conforms to such standards . . . In effect, this permits individual juries applying varying laws in different jurisdictions to set nationwide automobile safety standards . . . *Inasmuch as it was the Congress that designed the system, and because Congress is the body best suited to evaluate and, if appropriate, to change the system, we decline today to do anything in this regard except to bring the problem to the attention of the legislative branch.*

Dawson, 630 F.2d at 962-63 (emphasis added); *see also General Motors Corp. v. Edwards*, 482 So.2d at 1180 (noting that the jury's decision had "potential national implications," but, fully in keeping with Congress' intent, "refuse[d] to . . . hold" that the standards set by the federal government were "conclusive."). *See also Knippen*, 546 F.2d at 1000 (turning and parking light design complying with Standard 108 found defective); *Dorsey*, 655 F.2d at 656-57 (numerous design aspects complying with federal standards found insufficiently crashworthy); *Shipp*, 750 F.2d at 421 (roof design complying with Standard 216 found insufficiently crush-resistant); *Sours*, 717

F.2d at 1516-17 (same); *Fox*, 575 F.2d at 778 (rear passenger restraint system defective because it lacked rear shoulder harness which Standard 209 did not require); *Volkswagen*, 321 A.2d at 746 (fuel tank design complying with Standard 301 insufficiently crush-resistant); *Arbet*, 225 N.W.2d at 438 (same).

In the past decade, however, the federal appeals courts and state courts of last resort have dramatically split – both from their prior rulings and with each other – over whether compliance with Safety Act federal standards exempts manufacturers from common law liability, particularly in cases involving the failure to install lap belts, shoulder harnesses or airbags. As a result, after twenty years of harmony regarding the Safety Act's preemptive effect, the courts are now hopelessly in conflict over (a) whether the Safety Act expressly preempts common law claims, (b) whether the Safety Act's savings clause precludes resort to implied preemption analysis, (c) whether the Safety Act impliedly preempts common law claims, and (d) if it does, which ones and why.[1]

Thus, three federal courts and one state supreme court have held that the Safety Act does not *expressly* preempt common law claims, but does *impliedly* preempt them. These courts, moreover, have adopted widely varying implied preemption theories, some of which extend far beyond claims involving a failure to install lap belts, shoulder harnesses, or airbags.

In the first such case, *Wood v. General Motors Corp.*, 865 F.2d 395, 412 (1st Cir. 1988), *cert. denied*, 494 U.S. 1065

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[1] The reasons why this conflict developed in the last decade – the Third Circuit's improper expansion of implied preemption in *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181 (3d Cir. 1986), *rev'd in part and aff'd in part*, 112 S. Ct. 2608 (1992), and the confusion following this Court's decision in *Freightliner*, 115 S. Ct. at 1483 are reviewed in Section 2 below.

(1990), the First Circuit held that the Safety Act does not expressly preempt any common law claims, but that it impliedly preempts *design defect* claims. It noted that section 1392(d), as written, would preempt a state regulation requiring the installation of airbags in all cars and conceded that section 1397(k), as written, preserved all common law claims, including claims challenging the manufacturer's failure to install an airbag. It could see no reason, however, why Congress would have wanted to preserve common law claims that might have the same regulatory effect as a regulation that section 1392(d) would preempt. It, therefore, concluded that Congress must have written both sections as it did because, in 1966, "the only kind of legal claim which could give rise to the present dilemma – a cause of action based upon alleged automobile design defect – had yet to take its place in the arsenal of the plaintiffs' bar." *Wood*, 865 F.2d at 402. It found plaintiffs' "no-airbag" claim impliedly preempted on a theory that would preempt almost all design defect claims.

In *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990), the Tenth Circuit simply adopted the First Circuit's ruling in *Wood*, without explaining how this result comported with its 1976 affirmance of the verdict in *Fox v. Ford Motor*, 575 F.2d at 778, the rear shoulder harness case. The Tenth Circuit recently reaffirmed its commitment to *Kitts* in *Montag v. Honda Motor Co. Ltd.*, 75 F.3d 1414, 1417 (10th Cir.), *cert. denied*, 117 S. Ct. 61 (1996).

The Third Circuit also found implied preemption under the Safety Act, but on much more narrow grounds. In *Pokorny v. Ford Motor Co.*, 902 F.2d 1116, 1121 n.6 (3d Cir. 1990), it disagreed with both *Wood* and *Kitts* and held that common law claims alleging a failure to install airbags or automatic safety belts are impliedly preempted

because, in its view, Standard 208 gave manufacturers the option not to install those types of passive restraints. *Pokorny*, 902 F.2d at 1123-25, 1126 n.11. It ruled, however, that common law claims alleging a failure to install protective netting are not preempted because Standard 208 did not give manufacturers the option not to install that type of passive restraint. *Id.* at 1126. *Pokorny* distinguished *Dawson*, 630 F.2d at 957-58, on the (incorrect) ground that "there was no federal standard governing the particular design said to be defective in *Dawson*, and thus there was no asserted conflict between federal standards and common law liability." *Pokorny*, 902 F.2d at 1122. More recently, the Third Circuit clarified that *Pokorny*'s implied preemption rationale affects cases involving other design defect claims. In *Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777 (3d Cir. 1992), it held that, under *Pokorny*, Standard 108 (which establishes minimum illumination requirements for vehicles) does not impliedly preempt all common law claims relating to illumination and lighting equipment, but does limit the *type* of claims related to those matters that can be pursued. *Buzzard*, 966 F.2d at 784 n.11.

The Mississippi Supreme Court has also found implied preemption of common law claims challenging an auto manufacturer's failure to install an airbag. *Cooper v. General Motors Corp.*, No. 92-CA-01334-SCT, 1996 WL 272363 (Miss. 1996), *petition for reconsideration pending* (filed June 19, 1996). In broad language that effectively read the savings clause out of the Safety Act, it said:

> This federal law . . . has a preemption clause that prohibits any conflicting state laws on the same matter, and a savings clause permitting any state common law actions. We do not see a conflict in these two sections. It does not take a genius to figure out that the preemption clause

> tells states that they cannot have any nonidentical laws on any area which is being governed by federal regulations, and *for those areas in which there are no regulations, the states can still apply their common law*. The savings clause merely underscores the right of consumers to bring nonpreempted common law claims; it does not undermine the explicit preemptive language in the statute.

Cooper, 1996 WL 272363 at *16 (emphasis added). The dissent aptly observed, "Perhaps the majority should instead refer to the Safety Act as the 'Automobile Manufacturer Limited Liability Act' or the 'Automobile Manufacturer Profit Protection Act.' " *Id.* at *19.

Like the four foregoing courts, the Eleventh Circuit once held that the Safety Act impliedly preempts common law claims, but it has since reversed course. In *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 495 U.S. 1065 (1990), *rev'd in part, Myrick v. Fruehauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), *aff'd sub nom. on other grounds Freightliner Corp. v. Myrick*, 115 S. Ct. 1483 (1995), the Eleventh Circuit held common law claims involving the failure to install airbags impliedly preempted because they "frustrate the federal regulatory scheme." *Taylor*, 875 F.2d at 827. Two years ago, however, the Eleventh Circuit held in *Myrick v. Fruehauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), *aff'd sub nom. on other grounds Freightliner Corp. v. Myrick*, 115 S. Ct. 1483 (1995), that this Court's decision in *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. at 2608, negated *Taylor*'s implied preemption ruling and that the Safety Act expressly preserves all common law claims. This Court affirmed the ruling in *Myrick* on other grounds in *Freightliner* and, the Eleventh Circuit subsequently reiterated its holding in *Myrick* that "standards promulgated under the National Traffic and Motor Vehicle Safety Act

do not preempt common law claims." *Doyle v. Volkswagenwerk Aktiengelellschaft*, 81 F.3d 139, 141 (11th Cir. 1996) (emphasis in original).

The Fifth Circuit reached a similar conclusion in *Perry v. Mercedes Benz of North America*, 957 F.2d 1257 (5th Cir. 1992), which held that, if an airbag system is installed, a state common law claim for defective design of the system is not preempted. *Id.* at 1264. *Perry* did not reach the issue of whether the Safety Act preempts common law claims regarding the failure to install an airbag, lap belt, or shoulder harness. *Id.* at 1265.

Three state supreme courts, however, have reached that issue and each has found no preemption – in direct contrast to the First, Tenth, and Third Circuits, and the Mississippi Supreme Court. In *Ford Motor Co. v. Tebbetts*, 665 A.2d 345 (N.H. 1995), *cert. denied*, 116 S. Ct. 773 (1996), the New Hampshire Supreme Court held that section l397(k) plainly evidences Congress' intent to preserve all common law claims, including claims involving the failure to install airbags, and bars any finding of express or implied preemption.

The Indiana Supreme Court agrees. In *Wilson v. Pleasant*, 660 N.E.2d 327 (Ind. 1995), it found section 1397(k) conclusive, too, and held that the auto manufacturer's implied preemption arguments could not be considered. The Indiana Supreme Court discussed in detail – and noted its disagreement with – the federal appeals court decisions finding implied preemption. *Id.* at 334-39. It held that, even if the manufacturer's implied preemption arguments could be considered, they had to be rejected, since there is no conflict between Standard 208 and a common law claim alleging negligent failure to install an airbag. *Id.* at 339.

The Arizona Supreme Court also ruled that section 1397(k) requires a finding of no preemption and bars

implied preemption analysis in a case, like the instant one, involving Hyundai's failure to include a lap belt in one of its cars. *Hernandez-Gomez v. Volkswagen of America, Inc.*, 884 P.2d 183 (Ariz. 1994), *vacated and remanded*, 115 S. Ct. 1819 (1995). After this Court vacated and remanded that decision for reconsideration in light of *Freightliner*, the Arizona Supreme Court again found no preemption. *Hernandez-Gomez v. Volkswagen of America, Inc.*, 917 P.2d 236 (Ariz. 1996). This time, however, it issued a split decision, with the majority finding that implied preemption might (or might not) be considered, but that, even if it is, implied preemption cannot be found in cases involving cars that roll over, since Hyundai complied with a portion of Standard 208 that only addresses front-end crashes. *Id.* at 246.

This ongoing dispute about the Safety Act's preemptive effect has serious practical consequences. There are currently thousands of automobile design defect lawsuits pending throughout the nation, hundreds of which involve the manufacturers' failure to install lap belts, shoulder harnesses, and/or airbags. The preemption issue has been raised or is lurking in each of these cases. The legal and judicial resources being spent on this issue are growing rapidly, with no end to the conflict in sight.[2]

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[2] At the state intermediate appeals court level, *see, e.g., Ketchum v. Hyundai Motor Company*, ___ P.2d ___, No. B077874 (Cal. Ct. App. Oct.11, 1996) (no lap belt, no preemption, implied preemption barred); *Nissan Motor Corp v. Superior Court*, 261 Cal. Rptr. 80 (Cal. Ct. App. 1989), *cert. den.*, 494 U.S. 1066 (1990) (no airbag, implied preemption); *Loulos v. Dick Smith Ford, Inc.*, 882 S.W.2d 149 (Mo. Ct. App. 1994) (no airbag, no preemption, implied preemption barred); *Miranda v. Fridman*, 647 A.2d 167 (N.J. Super. Ct. App. Div.), *cert. den*, 649 A.2d 1291 (N.J. 1994) (no lap belt, express preemption); *Panarites v. Williams*, 629 N.Y.S. 2d 359 (N.Y. App. Div. 1995) (no airbag, express and

The time has come for this Court to end this conflict. To do so, it should grant review in this case. If it does not, the conflict will only continue, primarily because of the confusion following *Freightliner*.

1. Courts Throughout the Country Are Hopelessly Confused After *Freightliner* About Whether the Safety Act Preempts Common Law Claims.

The reason that the lower courts continue to disagree about the Safety Act's preemptive effect is the confusion following this Court's decision in *Freightliner* – confusion which only this Court can eliminate. To appreciate why *Freightliner* resulted in so much confusion, it is essential to understand the context in which *Freightliner* took place.

As noted above, for twenty years after the Safety Act's 1966 enactment, the nation's appellate courts unanimously agreed that the Safety Act does not preempt

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implied preemption); *Minion v. Honda of America Mfg. Inc.*, 1996 WL 402070 (Ohio App. 1996), *review granted*, No. 96-2006 (Ohio Oct. 23, 1996) (no airbag, implied preemption); *Nelson v. Ford Motor Co.*, 670 N.E.2d 307 (Ohio Ct. App. 1996), *review granted*, No. 9&2006 (Ohio Oct. 23, 1996) (no airbag, no preemption, implied preemption barred); *Attocknie v. Carpenter Manufacturing, Inc.*, 901 P.2d 221 (Okla. App. 1995) (no lap belt, no preemption, implied preemption barred); *Cellucci v. General Motors Corp.*, 676 A.2d 253 (Pa. Super. 1996) (en banc), *review granted*, No.0379 (Pa. Oct.22, 1996) (no airbag, implied preemption); *Muntz v. Commonwealth of Pennsylvania*, 674 A.2d 328 (Pa. Commw. Ct. 1996) (no airbag, no preemption); *Alvarado v. Hyundai Motor Company*, 908 S.W.2d 243 (Tex. Ct. App. 1995), *appeal pending*, No.95-0969 (Tex.) (no lap belt, no preemption); *Marrs v. Ford Motor Co.*, 852 S.W.2d 570 (Tex. Ct. App. – Dallas 1993, no writ) (no airbag, implied preemption); *Dykema v. Volkswagenwerk AG*, 525 N.W.2d 754 (Wis. Ct. App. 1994), *cert. den.*, No. 94-1910, 1995 WL 334794 (Oct. 2, 1995) (no lap belt, express preemption); *Boyle v. Chrysler Corp.*, 501 N.W.2d 865 (Wis. Ct. App. 1993) (no airbag, express preemption).

common law claims. In 1986, however, the U.S. Court of Appeals for the Third Circuit issued its since-rejected decision in *Cipollone v. Liggett Group, Inc.*, 789 F.2d at 181, expanding the implied preemption doctrine to find certain common law claims involving cigarettes preempted despite Congress' contrary intent. The First and Eleventh Circuits issued similar decisions. *Palmer v. Liggett Group, Inc.*, 825 F.2d 620 (1st Cir. 1987); *Stephen v. American Brands, Inc.*, 825 F.2d 312 (11th Cir. 1987).

Before this Court had an opportunity to overturn these decisions, the defective strain of implied preemption analysis adopted in the cigarette cases infected the interpretation of the Safety Act. In 1988, the First Circuit heard *Wood*, 865 F.2d 395, in which General Motors argued again, that it was exempt from common law liability because it complied with a Federal motor vehicle safety standard – in that case, Standard 208 governing occupant restraints. In a two-to-one decision, with Judge Selya dissenting, the First Circuit explicitly adopted *Palmer*'s rationale and became the first appeals court to find a common law claim impliedly (but not expressly) preempted by the Safety Act, despite Congress' clear statement of anti-preemptive intent. *Wood*, 865 F.2d at 410-11. In the next three years, the Third, Tenth and Eleventh Circuits (and several lower courts) followed, albeit on varying rationales. *See Pokorny*, 902 F.2d at 1116; *Kitts*, 875 F.2d at 787; *Taylor*, 875 F.2d at 816.

In 1992, however, this Court issued *Cipollone*, 112 S. Ct. at 2608, explicitly rejecting the Third Circuit's (and its sister courts') expansion of the implied preemption doctrine. In a portion of the opinion joined by seven members of this Court, it said:

> In our opinion, the pre-emptive scope of the [two statutes at issue] is governed entirely by the express language in . . . each Act. When

> Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a reliable indicium of congressional intent with respect to state authority, there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation.

112 S. Ct. at 2618. Thus, *Cipollone* held that the lower courts had erred in finding *implied* preemption of any common law claims involving cigarettes and that only *express* preemption analysis should have been used. *Id.*

Cipollone effectively overruled the decisions finding implied preemption under the Safety Act. It should have returned the lower courts to their unanimous view that the Safety Act expressly preserves all common law claims. And it probably would have done so absent *Freightliner*.

Freightliner reviewed the first decision by a federal appeals court or state court of last resort to interpret the Safety Act's preemptive effect after *Cipollone*. In the decision being reviewed, *Myrick*, 13 F.3d at 1522, the Eleventh Circuit first stated *Cipollone*'s teaching broadly, noting "*Cipollone's* clear instruction that when there is an express pre-emptive provision we should not consider implied preemption."[3] It later said, however, that "at the very least" *Cipollone* "establishes there is a presumption that a pre-emption clause is a reliable indicium of congressional

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[3] This statement tracked language in *Cipollone* itself. *See Cipollone*, 112 S. Ct. at 2625 (Blackmun J., concurring in part and dissenting in part) ("We resort to principles of implied pre-emption . . . only when Congress has been silent with respect to pre-emption"); *id.* at 2633 (Scalia, J., dissenting in part and concurring in the judgment) ("Once there is an express pre-emption provision, in other words, all doctrines of implied pre-emption are eliminated.")

intent" and that, "[e]ven without such a presumption we would be convinced that the express preemption provisions of the Safety Act are a reliable indicium of congressional intent." *Myrick*, 13 F.3d at 1525. The Eleventh Circuit concluded that *Cipollone* negated *Taylor*'s implied preemption decision, that section 1397(k) barred resort to implied preemptive analysis under *Cipollone*, and that the Safety Act expressly preserved all common law claims. *Myrick*, 13 F.3d at 1522-28.

In *Freightliner*, 115 S. Ct. at 1437, this Court affirmed on alternative grounds, but issued a decision that left unresolved whether implied preemption analysis is appropriate under the Safety Act. The Court said that the Eleventh Circuit had misread *Cipollone* to hold "that implied preemption cannot exist when Congress has chosen to include an express pre-emption clause in a statute" and rejected that position as "without merit." *Freightliner*, 115 S. Ct. at 1487. The Court then clarified the proper approach to preemption analysis:

> The fact that an express definition of the pre-emptive reach of a statute "implies" – i.e., supports a reasonable inference – that Congress did not intend to pre-empt other matters does not mean that the express clause entirely forecloses any possibility of implied preemption. . . . At best, *Cipollone* supports an inference that an express preemption clause forecloses implied preemption; it does not establish a rule.

Freightliner, 115 S. Ct. at 1488.

In regard to *Cipollone*, these statements made perfect sense. The two statutes at issue in *Cipollone* contained express preemption clauses (but, unlike, the Safety Act, no express *anti- preemption* clause). The fact that Congress thought to include those express clauses in the statutes did not, without more, necessarily mean that Congress also thought of all other aspects of state law that might be

preempted by the statutes – and intended to preserve them.

The Safety Act, however, has more than just an express preemption clause. There is an express *anti-preemption* clause explicitly preserving all common law claims. In *Freightliner*, however, this Court did not address the savings clause. Instead, it simply said the Eleventh Circuit's interpretation of *Cipollone* was "without merit" and then made the statements quoted above. *Freightliner*, 115 S. Ct. at 1487-88. As a result, *Freightliner* left uncertainty about whether section 1397(k) precludes implied preemption under the Safety Act.[4]

The confusion caused by the discussion of *Cipollone* in *Freightliner* was compounded by the preemption analysis actually employed in *Freightliner*. *Cipollone* stressed the importance of focussing on the words Congress used to determine whether express preemption exists. In

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[4] For example, after originally finding in *Hernandez-Gomez*, 884 P.2d at 191, that section 1397(k) bars resort to implied preemption analysis, the Arizona Supreme Court said, on remand after *Freightliner*: "[A]lthough we agree that it is possible the presence of a savings clause categorically precludes preemption, the [U.S. Supreme] Court did not address the issue and we cannot tell from the language in [*Freightliner*] that it would necessarily agree with such an interpretation. It is clear to us, however, that at the very least [*Freightliner*] stands for the proposition that common-law claims that expressly and directly conflict with the text of the standard are preempted by the preemption clause; common-law claims that do not expressly conflict may still be preempted if they violate one of the articulated rules for implied preemption; common-law claims that are neither expressly nor impliedly preempted are saved. Despite the existence of the savings clause, therefore, we proceed with . . . implied preemption analysis . . . because this case has been in our judicial system since 1990, has now been before this Court twice and before the United States Supreme Court once." *Hernandez-Gomez*, 917 P.2d at 243.

Freightliner, however, this Court did not reach the question of whether 15 U.S.C. § 1392(d) expressly preempts common law claims or 15 U.S.C. § 1397(k) expressly preserves them. *Freightliner*, 115 S. Ct. at 1487 n.3. Instead, it rejected express preemption because section 1392(d), by its terms, only applies, "whenever a Federal motor vehicle safety standard is in effect" with respect to the relevant "aspect of performance" and no such Federal standard was in effect with regard to the aspect of performance (truck stopping distances) at issue in the case. *Freightliner*, 115 S. Ct. at 1147. This has prompted some courts – including the Minnesota Court of Appeals – to hold (incorrectly) that there is preemption whenever a Federal safety standard is in place, despite the clear words of the savings clause.[5]

Thus, while *Freightliner* may have clarified the proper approach to preemption analysis in cases like *Cipollone*,

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[5] *See, e.g., Cooper v. General Motors Corp.*, 1996 WL 272362 at *15 (citing *Hill v. General Motors Corp.*, No. Civ. 94-AR-0088-S (W.D. Ala. Nov.15, 1995)) ("While this Court is somewhat notorious for its perceived inability to predict the direction of Eleventh Circuit jurisprudence, it does know a slam dunk when it sees one. The directive from *Freightliner Corp.* is clear: 'Go back to *Taylor*.' ") *See also Wilson*, 660 N.E.2d at 339 (Dickson, J., concurring) (quotations and citations deleted) ("Unlike the majority, I would not hold that the § 1397(k) preemption clause entirely forecloses any possibility of implied preemption in this case. The United States Supreme Court in *Freightliner* was faced with the same statute with the same preemption clause and savings clause – that is before us in the present case. Rather than disposing of the issue by declaring implied preemption to be foreclosed, the *Freightliner* majority in fact performed an implied preemption analysis, concluding that compliance with both federal and state law was not impossible and that the lawsuit did not frustrate congressional objectives. That the [*Freightliner*] court expressly conducted such an analysis leads me to conclude that we must do likewise.")

where the statutes involved contain only express preemption clauses, it has created confusion among the lower courts about the preemptive effect of the Safety Act with its savings clause. Only this Court can resolve that confusion. To do so, it should grant review in this case and answer the critically important federal question presented.

2. Whether the Safety Act Preempts Common Law Claims is An Important Question of Federal Law.

The question of federal law presented by this case is extremely important. It boils down to this: whether courts are free to disregard the argument against preemption, contravene Congress' plainly-stated intent, and exempt manufacturers from liability under state common law by judicial decree. Hyundai and its fellow manufacturers agree that the question presented is important. One year ago, the auto manufacturers jointly urged this Court to decide whether compliance with Standard 208 renders them immune from common law liability. *Ford Motor Co. v. Tebbetts*, No. 95-709 (October Term, 1995), Brief of the American Automobile Manufacturers Association and the Association of International Automobile Manufacturers, Inc. as *Amici Curiae* Supporting the Petition.

This Court recently again re-emphasized that two controlling principles guide preemption analysis. First, the inquiry starts with a presumption against preemption, "particularly when Congress has legislated in a field which the States have traditionally occupied." *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240, 2250 (1996). This approach "is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety." *Id.* Second, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Id.* "As a

result, any understanding of the scope of a pre-emption statute must rest primarily on a fair understanding of *congressional purpose." Id.* (emphasis in original).

The decision below and the other implied preemption decisions also contravene Congress' plain statement of intent. Congress could not have said it more clearly: "Compliance with *any* Federal motor vehicle safety standard . . . shall not exempt any person from any liability under common law." 15 U.S.C. § 1397(k) (emphasis added). As the United States explained in its *amicus* brief to this Court in *Freightliner*:

> [U]nder a straightforward reading of Section 1392(d) and Section 1397(k), taken together, States are preempted from adopting prescriptive safety standards by legislative or administrative action if NHTSA has established a safety standard governing the same aspect of performance . . . State courts, however, are not precluded by those provisions from entering tort judgments in cases raising the claim that a vehicle or item of equipment was defectively designed with respect to that same aspect of performance.

Freightliner Corp. v. Myrick, No.94-286 (October Term, 1994), Brief for United States as *Amicus Curiae* Supporting Respondents, at 16.

If the Safety Act's plain words left any question as to Congress' intent regarding common law claims, it would surely be answered by the statute's legislative history. The House Committee, which added section 1397(k) to the Safety Act, explained its purpose in clear and unequivocal terms:

> It is intended and this subsection specifically establishes, that *compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law particularly those relating to warranty, contract, and tort liability.*

H.R. Rep. No. 1776, 89th Cong., 2d Sess. 24 (1966) (emphasis added).

Given the foregoing, the decision below is plainly in error, as are those cases resorting to implied preemption analysis. In both *Cipollone* and *Medtronic*, this Court found that Congress' enactment of express preemption provisions, standing alone, barred resort to implied pre-emption principles, even though the members of the Court disagreed about the meaning of the express pre-emption provisions. *See Cipollone*, 112 S. Ct. at 2618; *Medtronic*, 116 S. Ct. at 2250. Here, Congress enacted both an express pre-emption provision and an express anti-pre-emption provision explicitly preserving the aspect of state law at issue. To allow implied pre-emption under these circumstances would render the limitations imposed on implied pre-emption in *Cipollone* and *Medtronic* meaningless – and make implied pre-emption analysis a tool for wholesale judicial activism and the widespread evasion of Congress' intent.

Moreover, even if implied pre-emption could properly be considered under the Safety Act, claims like the Schlonotzes' still would not be pre-empted. There simply is no conflict between Schlotzes' claims and Standard 208. Standard 208 required all 1988 model-year cars to have, at a minimum, either (1) a manual lap belt and shoulder harness, (2) an automatic belt system providing at least a specified level of protection in head-on crashes, or (3) an airbag or other device providing automatic protection in head-on and angular crashes. Hyundai, which chose the second option, could have installed a lap belt (or for that matter, an airbag) in Mr. Schlotz's 1988 Hyundai Precis *in addition to* the automatic shoulder harness and knee bolster it installed, and still have complied with that option under Standard 208. If Hyundai had taken that step, the Schlotz Hyundai would have been safer. If, by failing to

install a lap belt, Hyundai violated Minnesota common law and caused Robert Schlotz's injuries, Congress did not intend to exempt Hyundai from liability.

This Court has repeatedly refused to find that Congress intended to deprive tort victims of common law remedies, even when Congress has not expressly preserved common law claims, saying "it is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." *Medtronic*, 116 S. Ct. at 2251 (citing *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984)). In this case, Congress directly addressed and expressly *preserved* all common law claims. This Court should grant review to ensure that Congress' intent is respected and that the Schlotzes – and thousands of similarly situated Americans – are not illegally denied their day in court.

II. Application of the 1963 Seat Belt Gag Rule to Bar a Common Law Crashworthiness Cause of Action Which Did Not Exist until 1968 Violates the Equal Protection Clause Because the Safety Act Eliminated Any Legitimate State Purpose of Protecting Auto Manufacturers From "state-mandated seat belts" and There Can Be No Rational Basis for the Classification.

This Court should also consider the Minnesota Supreme Court's decision that the seat belt gag rule enacted in 1963 can constitutionally bar the Schlotzes' common law claims when the speculative legislative purpose – protection for manufacturers from "state-mandated seat belts" – no longer exists and Congress enacted the Safety Act. In *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (1997), the Minnesota Supreme Court held that the seat belt gag rule could constitutionally destroy common law crashworthiness claims which did not exist when the Minnesota Legislature enacted the gag rule in 1963. *Olson*

hypothesized that the legislature " . . . might logically have been designed to shield manufacturers from lawsuits should *state-mandated seat belts* ultimately result in injuries to motorists." *Id.* at 496 (emphasis added) (footnote omitted). *Olson* rejected Equal Protection challenges because it found the statute "even-handed" and that any legislative distinction had a " . . . reasonable basis in view of the contemporaneous burden imposed on automobile manufacturers. *Id.* at 497. The effect for the Schlotzes is that they have no cause of action while individuals injured by something other than a seat belt are entitled to their day in court.

Olson's interpretation of Minn. Stat. § 169.685 subd. 4 ignores the fact that there is no longer any legitimate State purpose for protecting seat belt manufacturers because the Federal government – via the Safety Act and its regulations – now sets the appropriate standards and liability – including the express preservation of the very common law claims *Olson* held are barred by the gag rule.

1. The Seat Belt Gag Rule Serves No Legitimate State Purpose Because the Safety Act, Its Regulations and the Common Law Now Regulate Seat Belt Claims.

There is no legitimate legislative purpose for protecting manufacturers from claims based upon now-defunct state seat belt laws. This Court has recognized that Equal Protection analysis requires that legislative distinctions must be rationally related to a statute's legitimate purpose. *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 864, 882 (1995); *Mathews v. Lucas*, 427 U.S. 495, 510 (1976). This Court has consistently recognized the importance of tailoring investigations of purpose in such a way that rational relation review retains meaning. In *Logan v.*

Zimmerman Brush, this Court stated that legislative distinctions must be based upon "more than the exercise of strained imagination" to pass rational relation review. 455 U.S. 422, 442 (1982). In *Eisenstadt v. Baird*, this Court stated that legislative classifications may not be drawn so as to be "wholly unrelated to *the purpose of the statute*." 405 U.S. 438, 447 (1972) (emphasis added). Taken together, *Logan* and *Eisenstadt* require that judicial investigations of purpose in equal protection analysis not stray far from the probable *actual* purpose of the statute as indicated by its language, legislative history, and other manifestations of legislative intent. Finally, statutory distinctions may have a conceivable legitimate purpose and yet fail rational basis review because the conceivable purpose contradicts other policies of the state. *Alleghany Pittsburgh Coal v. County Com'n*, 488 U.S. 336, 344 n.4 (1989) (invalidating as irrational a West Virginia property tax system that unintentionally contradicted state policy of tax equity but refusing to extend holding to similar tax systems in other states where inequitable result was intentional).

The classification *Olson* upheld no longer has any legitimate purpose given Congress' decision to create universal safety regulations while saving common law remedies and the statute's enactment five years *before* any court recognized a common law crashworthiness claim and three years *before* Congress enacted the Safety Act. The Safety Act – including its express preservation of common law claims – now dictates the appropriate liability.

Olson speculated that the gag rule's classification could have been intended to protect manufacturers from Minnesota's 1963 seat belt requirement statutes. *Olson*, 558 N.W.2d at 495 ("In evaluating the legislative purpose behind the rule, we find it significant that the seat belt

gag rule was enacted as part of a measure that required manufacturers to install seat belts in automobiles manufactured after January 1, 1964."). The goal was to protect manufacturers from liability based upon Minnesota's then new seat belt statutes. *Id.* ("Viewed in this context . . . the seat belt gag rule might logically have been designed to shield manufacturers from lawsuits should *state-mandated seat belts* ultimately result in injuries to motorists.") (emphasis added).

Olson's purported legitimate purpose for the gag rule – to protect manufacturers in 1963 when the State of Minnesota and not Congress imposed seat belt requirements – no longer exists. Congress passed the Safety Act in 1966. As described earlier, the Safety Act and its regulations prescribe the minimum requirements for all seat belts throughout the country. The legislative purpose of shielding manufacturers from Minnesota's seat belt requirements – long since replaced by the Safety Act and its regulations – no longer exists.

In fact, *Olson*'s interpretation of Minn. Stat. § 169.685 to shield manufacturers of any defective seat belt – presumably including a seat belt which violates federal regulations – conflicts with the Safety Act and Minnesota's long-standing policy of providing a remedy to injured individuals. The Safety Act bars state legislatures from continuing in effect any standard which is not " . . . identical to the standard prescribed under this chapter." 15 U.S.C. § 1392(d). In this case, the Minnesota appellate courts have decided that the Minnesota Legislature may properly shield all seat belt manufacturers – including those that violate the federal regulations – from common law claims which the Safety Act explicitly preserved. *Olson*'s interpretation of the gag rule is unconstitutional and provides shelter from common law liability which the Safety Act expressly preserved.

2. There is No Rational Basis for Protecting Manufacturers from Common Law Claims Expressly Preserved by the Safety Act.

There is also no rational basis for *Olson*'s speculative goal – protecting manufacturers from state law requirements which are no longer in effect. The seat belt gag rule cannot protect manufacturers from "state-mandated seat belts" because it is Congress, not the State of Minnesota, which now prescribes the appropriate seat belts. This Court has recognized that the constitutionality of a statute may change over time. *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2813 (1992) ("In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty."). Regulations and statutes may lose their constitutional validity when the previously legitimate goal is removed. *Morey v. Doud*, 354 U.S. 474, 475 (1957) (Frankfurter, J. dissenting) ("Surely there is time enough to strike down legislation when its constitutional justification is gone. . . . Regulatory measures have been sustained that later, in changed circumstances, were found to be unconstitutional."). The elimination of any state-mandated seat belt laws, and Congress' decision in the Safety Act to preserve common law claims, destroyed any rational basis for granting manufacturers blanket immunity for defective seat belts in Minnesota.

CONCLUSION

This petition for writ of certiorari should be granted.

Dated: June 24, 1997.

Respectfully submitted,

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APPENDIX

STATE OF MINNESOTA
IN COURT OF APPEALS
C5-96-1207

Robert C. Schlotz, et al.,
Appellants,

vs.

Hyundai Motor Company,
a South Korean corporation, et al.,
Respondents,

Walter Carl Albers,
Respondent.

Filed January 14, 1997
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 9410723

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Considered and decided by Kalitowski, Presiding Judge, Toussaint, Chief Judge, and Foley, Judge.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

SYLLABUS

1. Common law automobile crashworthiness claims grounded on the manufacturer's failure to install lap belts are preempted by the National Traffic and Motor Vehicle Safety Act if: (1) the manufacturer's passive restraint system complied with federal safety standards regulating motor vehicle occupant crash protection; and (2) common law liability would have the effect of forcing manufacturers to choose a lap belt option over other statutorily approved options.

2. Minn. Stat. § 169.685, subd. 4 (1996), bars automobile crashworthiness claims alleging the manufacturer's failure to install lap belts rendered the automobile uncrashworthy.

Affirmed.

OPINION

KALITOWSKI, Judge

Robert C. Schlotz and Cindy J. Schlotz, plaintiffs in an automobile crashworthiness action, appeal from a grant of summary judgment in favor of manufacturers and distributer, Hyundai Motor Company, Hyundai Motor America, Inc., and Mitsubishi Motor Sales of America, Inc. (Hyundai). Appellants challenge the district court's grant of summary judgment, contending: (1) their common law claims based on Hyundai's failure to install lap belts are not preempted by the National Traffic and Motor Vehicle Safety Act (Safety Act); and (2) the district court erred in applying Minn. Stat. § 169.685, subd. 4, to bar

their automobile crashworthiness and defective seat back claims.

FACTS

Robert C. Schlotz, the driver of a 1988 Hyundai-manufactured Mitsubishi Precis, was waiting for a chance to turn left into a shopping mall when another automobile rearended his car propelling it into oncoming traffic. A second car then collided head-on with Schlotz's Precis. Following impact the seat back released and Schlotz slid forward and upward under his shoulder harness. Schlotz suffered severe injuries including a torn intestine and a compression fracture of the vertebrae.

The vehicle's passive restraint system was designed to engage without action by the occupant and incorporated the following: (1) a two-point shoulder belt consisting of a shoulder strap permanently attached at the base of the right side of the driver's seat, extending across the torso and shoulder area of the driver and manually fastened to the door on the upper-left side of the driver; (2) a seat mounted retractor; and (3) a ramped seat with knee bolsters designed to provide lower torso restraint in a frontal collision. By design, the vehicle was not equipped with lap belts.

The Schlotzes sued Hyundai claiming both the passive seat belt system and the seat back in the vehicle were defective and unreasonably dangerous directly causing Robert Schlotz's injuries. The district court granted summary judgment in favor of Hyundai based on two theories: (1) appellants' common law claims were preempted by the Safety Act; and (2) Minn. Stat. § 169.685, subd. 4,

operates to bar appellants' automobile crashworthiness and defective seat back claims.

ISSUES

1. Does the Safety Act preempt appellants' common law claim that the automobile at issue was not crashworthy because of Hyundai's failure to install lap belts?

2. Does Minn. Stat. § 169.685, subd. 4, bar appellants' claim based on Hyundai's failure to install lap belts?

3. Does Minn. Stat. § 169.685, subd. 4, bar appellants' claim based on an allegedly defective seat back?

ANALYSIS

The interpretation of statutes is a question of law reviewed de novo by this court. ***Hibbing Educ. Assn v. Public Employment Relations Bd.***, 369 N.W.2d 527, 529 (Minn. 1985). When interpreting statutes, a court's function is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16 (1996). If a statute is free from ambiguity, execution of this task requires courts to look only at the statute's plain language. ***Id.; Tuma v. Commissioner of Econ. Sec.***, 386 N.W.2d 702, 706 (Minn. 1986).

Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from summary judgment, we ask whether there is a genuine issue of material fact and whether the district court erred

in its application of the law. ***State by Cooper v. French***, 460 N.W.2d 2, 4 (Minn. 1990).

I.

Appellants contend the district court erred in determining their crashworthiness cause of action was preempted under the Safety Act.

> Preemption analysis begins with the assumption that the "historic police powers of the [s]tates" are not to be eclipsed unless to do so was "the clear and manifest purpose of Congress."

Dahl v. Charles Schwab & Co., 545 N.W.2d 918, 922 (Minn. 1996) (quoting ***Rice v. Santa Fe Elevator Corp.***, 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947)), ***cert. denied***, 117 S. Ct. 176 (1996).

Without the guidance of express language preempting state action or a savings clause expressly preventing implied preemption, courts must determine whether Congress implied the preemption of state regulation. ***Id.*** at 922-23. State regulation will be impliedly preempted if: (1) Congress has entirely displaced the possibility of state regulation; or (2) state regulations conflict with federal law. ***Id.*** at 924 (citing ***Pacific Gas & Electric v. State Energy Resources Comm'n***, 461 U.S. 190, 204, 103 S. Ct. 1713, 1722 (1983)). State law conflicts with federal law when "compliance with both federal and state regulations is a physical impossibility" or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ***Id.*** (quoting ***Florida Lime & Avocado Growers, Inc. v. Paul***, 373 U.S. 132, 141-43, 83 S. Ct. 1210, 1217-18 (1963)).

Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. §§ 30101-69 (1994),[1] "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." 49 U.S.C. § 30101 (previously codified at 15 U.S.C. § 1381 (1988)). The Safety Act authorized the Secretary of Transportation to establish practicable motor vehicle safety standards. 49 U.S.C. § 30111(a) (previously codified at 15 U.S.C. § 1392(a) (1988)). The Secretary, in turn, delegated this duty to the National Highway Transportation Safety Association (NHTSA), which promulgated Federal Motor Vehicle Safety Standards (FMVSS) at 49 C.F.R. §§ 571.1-.304 (1995).

FMVSS 208 is the standard governing occupant crash protection. 49 C.F.R. § 571.208. Automobile manufacturers choosing passive restraint systems to meet FMVSS 208 requirements may choose from among three FMVSS 208 options and must meet performance requirements for the chosen option. *Id.* at S4.1.2.1-.3. In addition, manufacturers may substitute an automatic restraint system to "meet the crash protection requirements of any" of the first three options, or "in place or any seat belt assembly otherwise required by that option." *Id.* at S4.5.3. This fourth option allows manufacturers to meet performance standards without installing any manual belts.

---

[1] The Safety Act was recently recodified, from Title 15 to Title 49 of the United States Code, so all "laws related to transportation [appear] in one comprehensive title." H.R.Rep. No. 103-180, at 3 (1994), *reprinted in* 1994 U.S.C.A.N. 818, 820. In making changes in the language to attain uniformity within the title and conform to contemporary usage precautions were taken against making substantive changes in the law. *Id.*

Congress, recognizing that it was legislating in an area previously governed by state law, addressed preemption stating:

> When a motor vehicle safety standard is in effect under this chapter, a State or political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle * * * only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. § 30103(b)(1) (previously codified at 15 U.S.C. § 1392(d) (1988)). A Senate Report explained the significance of safety standards as follows:

> [S]tandards are expected to be performance standards, specifying the required minimum safe performance of vehicles but not the manner in which the manufacturer is to achieve the specified performance. * * * The Secretary would thus be concerned with measurable performance of a braking system, but not its design details.

S. Rep. No. 1301, at 6 (1966), repainted [sic] in 1966 U.S.C.C.A.N. 2709, 2714.

Appellants, narrowly construing the preemption provision, first argue it does not preempt common law claims because safety standards are administrative standards or regulations and therefore, the phrase "safety standards" does not include common law claims. We disagree. Common law rules are state standards. ***See CSX Transp., Inc. v. Easterwood***, 507 U.S. 658, 664, 113 S. Ct. 1732, 1737 (1993) (determining that legal duties imposed by the common law fall within the scope of a preemption clause barring any state "law, rule, regulation, order or

standard"). The language in the preemption clause, therefore, precludes a state from establishing common law safety standards differing from federal standards.

Appellants also contend their common law claims are expressly preserved by a savings clause in the Safety Act:

> Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

49 U.S.C. § 30103(e) (previously codified at 15 U.S.C. § 1397(k) (1988)). We disagree. This savings clause does not preserve common law claims that conflict with federal law. Appellants' argument disregards case law holding that despite the savings clause, the Safety Act and FMVSS 208 preempt common law defective product claims grounded on failure to install an air bag because common law liability would have a regulatory effect conflicting with federal law. ***See, e.g., Wickstrom v. Maplewood Toyota, Inc.,*** 416 N.W.2d 838, 840 (Minn. App. 1987) (common law claims that a car is defective because it has one restraint option authorized under FMVSS 208 instead of another FMVSS 208 restraint with an air bag are preempted under the Safety Act), **review denied** (Minn. Feb. 17, 1988).

Wickstrom explains how the savings clause operates to retain common law liability while allowing implied preemption of some claims:

> The clear meaning of the [Safety Act's savings clause] is that compliance with federal standards will not protect automobile manufacturers from liability for design defects in connection with matters not covered by federal standards

Id.; see also Perry v. Mercedes Benz of N. Am., Inc., 957 F.2d 1257, 1265 (5th Cir. 1992) (recognizing that a manufacturer who chooses to "meet only the bare minimum performance requirements will be burdened with the potential for [common law] liability, but this is the exact burden that Congress preserved in the Savings Clause").

The following reasoning in *Wickstom* [sic] provides further guidance:

> A court decision creating common law liability for the failure to install airbags will effectively force automobile manufacturers to choose the airbag option over other statutorily approved options. * * * **A court decision that removes the element of choice authorized in the occupant crash safety regulations will frustrate the statutory scheme.**

416 N.W.2d at 841 (citation omitted). Thus, regardless of the potentially increased safety aspects of air bags, state courts are impliedly preempted from creating common law safety standards frustrating Congress's purpose of creating uniform motor vehicle safety standards.

Appellants argue *Wickstrom* is not controlling because their claim is not based on Hyundai's choice of FMVSS 208 options. Appellants contend Hyundai's choice of design was defective because it failed to restrain Mr. Schlotz properly. Hyundai disagrees, contending *Wickstrom* applies because the only defect appellants attribute to Hyundai's restraint system is the missing lap belt.

In *Wickstrom*, the court recognized that some FMVSS 208 options, i.e., air bags, may offer increased safety

aspects. *Id.* To allow a defective product claim that would hold an authorized FMVSS 208 option to the same common law safety standards as could be obtained through selection of the air bag option, however, would effectively foreclose selection of other FMVSS 208 options. *Id.* Similarly, appellants here cannot claim the FMVSS 208 option selected by Hyundai is defective because it failed to protect occupants as effectively as an alternative FMVSS 208 restraint system utilizing lap belts.

Appellants do not allege that the vehicle failed to meet the protection requirements and injury criteria of FMVSS 208. As the district court correctly noted, appellants' common law defective design claim is, in reality, a "no lap belt" claim. Hyundai was authorized by federal law to choose a passenger restraint system from among available options set forth under FMVSS 208 and Hyundai selected an available option that did not mandate installation of a lap belt.

We conclude that appellants' claim is preempted because a court decision creating common law liability for Hyundai's failure to install lap belts would, in effect, force manufacturers to choose a lap belt option over other options approved under FMVSS 208. ***See Dykema v. Volkswagenwerk AG***, 525 N.W.2d 754, 758 (Wis. App.1994) (addressing the federal preemption issue and holding that plaintiff's defective design and negligence claims, based on the manufacturer's failure to provide adequate lower pelvic restraint, would establish a different safety standard from that required by federal law), ***review denied*** (Wis. Feb. 21, 1995), ***cert. denied***, 116 S. Ct. 60 (1995).

II.

Appellants contend the district court erred in determining that the plain language of Minnesota's "seat belt gag rule," Minn. Stat. § 169.685, subd. 4, bars their crashworthiness claims. The statutory seat belt gag rule provides:

> Proof of the use or failure to use seat belts * * *, or proof of the installation or failure of installation of seat belts * * * shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

Minn. Stat. § 169.685, subd. 4. This court, in ***Anker v. Little***, recently determined that the gag rule language applies in crashworthiness actions to unambiguously prohibit admission of evidence of the use or nonuse of seat belts in any litigation involving personal injury that results from the use or operation of a motor vehicle. 541 N.W.2d 333, 339 (Minn. App. 1995) (holding plaintiffs [sic] cause of action extinguished through application of the seat belt gag rule), **review denied** (Minn. Feb. 9, 1996). Consistent with ***Anker***, we conclude that the plain language of the seat belt gag rule bars crashworthiness actions grounded on the installation or failure of installation of seat belts and that the district court correctly concluded that ***Anker*** is dispositive.

The district court also granted summary judgment on appellants' crashworthiness claim based on an allegedly defective seat back because "[appellants'] theory of defect and causation rely on the asserted cooperation of the seat back and the occupant restraint system." As stated by the district court, "the seat back and the passive restraint

system are [so] intertwined * * * that it would be impossible for a jury to distinguish between the two." In light of our determination regarding the applicability of the seat belt gag rule, we conclude that, because the theory of causation of appellants' claim intertwines an alleged vehicle defect with the manufacturer's failure to install seat belts, the seat belt gag rule bars the defective seat back claim.

DECISION

The district court properly concluded that: (1) the National Traffic and Motor Vehicle Safety Act preempts appellants' common law crashworthiness claim; and (2) Minn. Stat. § 169.685, subd. 4, bars both appellants' crashworthiness claim and appellants' defective seat back claim.

Affirmed.

STATE OF MINNESOTA

IN SUPREME COURT

C5-96-1207

Robert C. and Cinty [sic] J. Schlotz,

Appellants,

vs.

Hyundai Motor Company, a South Korean corporation, et al.,

Respondents,

Walter Carl Albers,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Robert C. and Cindy J. Schlotz for further review be, and the same is, denied.

Dated: March 26, 1997

BY THE COURT:

_____

Chief Justice

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Robert C. Schlotz and
Cindy J. Schlotz,

Plaintiffs,

vs

Hyundai Motor Company, a South Korean corporation; Hyundai Motor America, Inc. a California corporation; Mitsubishi Motor Sales of America, Inc. a Delaware corporation, and Walter Carl Albers,

Defendants.

ORDER ON MOTION FOR SUMMARY JUDGMENT

File No. 94-10723

The above-entitled matter came before the undersigned Judge of District Court on November 22, 1995 on the motion of all Defendants except Albers for summary judgment. On December 29, 1995, this Court ordered the parties to supply supplemental briefs because of the recently decided case of *Anker v. Little*, 541 N.W.2d 333 (Minn.App. 1995). *See*, this Court's order for Supplemental Briefs dated December 29, 1995. Those briefs were filed by the parties on or about January 17, 1996.

Plaintiff was represented by Tyrone P. Bujold, Esq. and Mullen J. Dowdal, Esq.

Defendants Hyundai Motor Corporation, Hyundai Motor America, Inc. and Mitsubishi Motor Sales of America, Inc. were represented by Mickey W. Greene, Esq. and Robert M. Lewis, Esq.

Defendant Walter Carl Albers is deceased and his estate is represented by Clark Iverson, Esq. and Steve Berndt, Esq. The estate of Defendant Albers did not appear at the summary judgment hearing.

Based upon the file and evidence before it, the Court makes the following:

FINDINGS OF FACT

For purposes of this summary judgment motion, the following is found to be true:

1. This lawsuit arises out of an automobile accident that occurred on February 24, 1991 at approximately 11:33 a.m. in Plymouth, Hennepin County, Minnesota. Complaint.

2. Plaintiff Robert Schlotz was driving his 1988 Mitsubishi Precis when his vehicle was struck from the rear by a Chevrolet van driven and owned by Defendant Albers. According to the Complaint, "Upon impact with the Albers' vehicle, Mr. Schlotz's seat back failed and released backwards into a more horizontal position. Complaint ¶ VI.

3. Schlotz' vehicle was pushed into the oncoming lane of traffic and was struck in the front by a Volkswagen owned and driven by John Ye (not a party to this matter). According to the Complaint, "The impact with Mr. Ye's vehicle caused Mr. Schlotz to slide forward and

upwards under his shoulder harness, driving his abdomen into the shoulder harness." Complaint ¶ VI.

4. At the time Schlotz' vehicle was hit by Albers' vehicle, Schlotz maintains he was wearing a securely fastened passive seat belt system, a two-point restraint (a shoulder harness only). *Id.* By design, the Precis was not equipped with a lap belt. The system consisted of a shoulder strap which was permanently attached at the base of the right side of the driver's seat, extending across the torso and shoulder area of the driver, manually fastened on the door on the upper left side of the driver. *Id.* ¶ VII. Defendants admit the 1988 Mitsubishi Precis was designed and equipped with a passive restraint system which incorporated a two point shoulder belt, seat mounted retractor, ramped seat and knee bolster. Defts. Separate Answers ¶ 7.

5. Plaintiff R. Schlotz claims he was seriously injured, including a severely torn small intestine with associated massive hemorrhaging of the mesentery blood vessel which trauma required the removal of all but two feet of his small intestine and a compression fracture in the L1-L2 disc area of his back which required a separate surgical procedure to fuse the L1-L3 discs with Harrington compression rods. Complaint ¶ VII. R. Schlotz claims permanent wage loss, permanent loss of earning capacity, medical, hospital and related expenses in excess of $192,000, future medical, hospital and related expenses, past and future permanent pain, suffering and general damages. *Id.*

6. It is clear from the Complaint and their Memorandum in Opposition that Plaintiffs claim *both* the passive seat belt system *and* the seat back in the Mitsubishi automobile were defective and unreasonably dangerous, and a direct cause of the R. Schlotz' injuries:

> First, the Hyundai's occupant restraint system failed to adequately restrain Robert Schlotz . . . Second, Hyundai defectively designed or manufactured the driver's side seat back . . .

Pltf. Memo in Opp. p. 1.

7. Plaintiffs claim strict liability as to all Defendants except Albers (Counts One and Two); negligence of Hyundai Motor Company (Count Three); breach of implied warranty of merchantability as to all Defendants except Albers (Count Four); negligence of Albers (Count Five); loss of consortium as to C. Schlotz (Count Six). Defendants move for summary judgment as to Counts 1-4, 6.

8. After careful perusal of Plaintiffs' Complaint, the arguments in their Memorandum in opposition, and the Affidavit of their expert, Louis A. D'Aulerio, the Court understands Plaintiffs' claim regarding the passenger restraint system as follows: 1) That Defendants chose a passenger restraint system option available to them under Federal Motor Vehicle Safety Standards; 2) that the *design* Defendants' used to meet the option was defective; 3) that the design was defective in and of itself because it did not meet the minimum requirements of the Federal Motor Vehicle Safety Standards (*See*, ¶ 8, 9 of D'Aulerio Aff.), and; 4) that the particular system in Plaintiff's vehicle was defective "at the time it left defendants."

CONCLUSIONS OF LAW

1. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits . . . show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Minn.R.Civ.P. 56.03.

2. A non-moving party must submit significant probative evidence tending to support its complaint; it must do more than simply show some metaphysical doubt as to the material facts. Minn.R.Civ.P. 56.05; *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn.App. 1989) citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The party opposing summary judgment has the burden to "provide the court with specific facts indicating that there is a genuine issue of fact." *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).

3. The district court may not decide factual issues; its sole function is to determine whether fact issues exist. *Prestressed Concrete, Inc. v. Bladholm Bros. Culvert Company*, 498 N.W.2d 274, 276 (Minn.App. 1993), *rev. denied*, (Minn. April 6, 1993).

4. All evidence in the record before the Court is to be construed in the light most favorable to the nonmoving party. *See Leonzal v. Grogan*, 516 N.W.2d 210 (Minn.App. 1994); *Rediske v. Johnson*, 415 N.W.2d 692, 693 (Minn.App. 1987), and all justifiable inferences are to be drawn in favor of the nonmoving party. *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981); *accord Liberty Lobby*, 477 U.S. at 255.

Preemption

5. The Court finds that Plaintiffs' claims as to the passenger restraint system are impliedly preempted by federal law.

6. In 1966, Congress enacted the Safety Act "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." *Freightliner Corp. v. Myrick*, ___ U.S. ___, 115 S.Ct. 1483, 1485 (1995), citing 15 U.S.C. § 1381. The Act requires the Secretary of Transportation to establish "appropriate Federal motor vehicle safety standards." *Id.*, citing § 1392(a).

7. The Safety Act's express preemption clause provides:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. § 1392(d).[1]

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[1] This provision is now codified at 49 U.S.C. § 30103(b) (1994), however, the recodification did not work any substantive changes. See, Deft. Memo in Supp. at p. 10, fn. 4. In addition, this cause of action arose before the recodification was implemented.

8. The Act also contains a savings clause, which states: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." *Myrick* at 1486, citing § 1397 (k).

9. Defendants argue, *inter alia*, that Plaintiff's claims regarding the passenger restraint system are preempted by implication because the state law principle they seek to vindicate would conflict with federal law. The United States Supreme Court has "recognized that a federal statute implicitly overrides state law either when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively [cites omitted] or when state law is in actual conflict with federal law." *Id.* at 1487.

10. In its 1974 amendment to the Safety Act, Congress expressly approved the right of an automobile manufacturer to comply with the Safety Act either by installing manual seat belts or passive restraints. *Taylor v. General Motors*, 875 F.2d 816, 826 (11th Cir. 1989). Consistent with Congress' 1974 mandate, the regulations promulgated under the Safety Act authorized automobile manufacturers to choose one of three different methods to comply with the safety standards for occupant crash protection. *Id.* Those options are:

> S4.1.3.2 *Passenger cars manufactured on or after September 1, 1987, and before September 1, 1988.*
>
> S4.1.3.2.1 Subject to S4.1.3.2.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1987, and before September 1, 1988, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3 . . .

S4.1.2.1 *First option – frontal/angular automatic protection system.*

* * *

S4.1.2.2 *Second option – head-on automatic protection system.*

S4.1.2.3 *Third option – lap and shoulder belt protection system with belt warning.*

* * *

S4.5.3 *Automatic belts.* Except as provided in S4.5.3.1, a seat belt assembly that requires no action by vehicle occupants (hereinafter referred to as an "automatic belt") may be used to meet the crash protection requirements of any option under S4. and in place of any seat belt assembly otherwise required by that option.

* * *

§ 571.209 **Standard No. 209; Beat** [sic] **belt assemblies.**

S3. *Definitions.*

Type 1 seat belt assembly is a lap belt for pelvic restraint.

Type 2 seat belt assembly is a combination of pelvic and upper torso restraints.

Type 2a shoulder belt is an upper torso restraint for use only in conjunction with a lap belt as a Type 2 seat belt assembly.

S4. *Requirements.*

S4.1 (b) *Pelvic restraint.* A seat belt assembly shall provide pelvic restraint whether or not upper torso restraint is provided, and

> the pelvic restraint shall be designed to remain on the pelvis under all conditions, including collision or rollover of the motor vehicle . . .

49 C.F.R. § 571.208 and § 571.209.

11. Under the principles of implied preemption, a state cannot impose common law damages on individuals for doing what a federal act or regulation authorized them to do. *Taylor v. General Motors Corp.*, 875 F. 2d 816, 827 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990). Here, Defendants were authorized by federal law to choose a passenger restraint system from among three options. They did so and a state common law rule cannot prohibit the exercise of that federally granted option. *Id.*

12. Plaintiffs argue that, even though Defendants may have chosen an option available to them under the Safety Act, the *design* Defendants used to incorporate that option was defective. According to Plaintiffs, the primary defect is that "the Hyundai 2-point restraint system . . . failed to provide lower torso/pelvic area restraint." Pltf. Memo in Opp., p. 1; *Perry v. Mercedes Benz of North America, Inc.*, 957 F.2d 1257 (5th Cir. 1992) (plaintiff claiming that a vehicle's occupant restraint itself was defective – not that the failure to install one was a defect). (*See*, discussion of *Perry* in Deft. Memo in Supp., p. 14, fn. 5 and Pltf. Memo in Opp., pp. 24-27).

13. The problem with Plaintiffs' argument is that, despite their vigorous protestations to the contrary, the only alleged defect they can point to is the lack of a lap belt. See, Pltf. Memo in Opp. p. 21 at para. 2; Complaint ¶ VI, VIII; D'Aulerio Aff. ¶ 10, 11. The reason Plaintiffs

want to distance themselves from a "no lap belt" theory is they realize it would be a death knell to their case. (*See*, Conclusion No. 14, *infra*). The Court agrees with Defendants that Plaintiffs, in reality, are basing their claims on a "no lap belt" scenario.

14. Per Chief Counsel for the National Highway Traffic Safety Administration, automatic belts, which consist solely of a shoulder belt are "seat belt assemblies" within the meaning of S3 of Standard No. 209. Greene Aff., Ex. 3. Further, "an automatic belt consisting solely of a shoulder belt may be used pursuant to S4.5.3 of Standard No. 208 to meet the crash protection requirements of the standard and in place of any seat belt assembly that would otherwise be required." *Id.*; *See*, also, Greene Aff. Exs. 4 and 5. In other words, no lap belts are required; " . . . seating positions equipped with automatic belts that are certified as complying with the frontal crash protection requirements are not required to provide lap belts either as part of the automatic belt or as a separate manual belt." Greene Aff., Ex. 4, p. 2 (letter from Paul Jackson Rice, Chief Counsel).

15. Although the Court finds implied preemption in relation to the passive restraint system, Plaintiffs seemingly still have claims regarding the alleged defect in the seat back. The Court finds, however, that the seat back and the passive restraint system are so intertwined as the alleged causes of Plaintiff R. Schlotz' injuries, that it would be impossible for a jury to distinguish between the two. The Court agrees with Defendants that "because plaintiffs' theory of defect and causation rely on the asserted cooperation of the seat back *and* the occupant

restraint system, complete summary judgment on plaintiffs' claims *as stated* should be granted." Deft. Memo in Supp., p. 2, fn. 1 [emphasis supplied].

"Seat Belt Gag Rule": Minn. Stat. § 169.685

16. Plaintiffs' claims fail on another ground – Minn. Stat. 169.685 (the "seat belt gag rule"). In the recent case of *Anker v. Little*, 541 N.W.2d 333 (Minn.App. 1995), the Minnesota Court of Appeals was required to decide whether Minn. Stat. § 169.685, subd. 4 (1994) applies to crashworthiness actions and, if so, whether such application violates a plaintiff's state and federal constitutional rights to redress for injuries, equal protection, or due process. The Appeals Court held the statute is applicable to crashworthiness actions and did not violate Anker's rights under the Minnesota or United States Constitutions. *Id.* at 340.

17. Minn. Stat. § 169.685, subd. 4 provides:

> Proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

In their findings following the above citation, the Court of Appeals states: "This language is unambiguous in prohibiting the admission of evidence of the use or nonuse of seat belts in any litigation involving personal injury that results from the use or operation of a motor vehicle." *Anker* at 336 [emphasis supplied].

18. The Court of Appeals decision is dispositive in the present case. Plaintiffs are claiming that the use of the seat belt system in the 1988 Precis was an integral cause of R. Schlotz' injuries; clearly *Anker* prohibits that claim.

19. There are no genuine issues of material fact.

ORDER FOR JUDGMENT

1. Defendants' motion for summary judgment is GRANTED.

2. Plaintiffs' take nothing by their claims as to Defendants Hyundai Motor Corporation, Hyundai Motor America, Inc. and Mitsubishi Motor Sales of America, Inc.; and Plaintiff's claims are DISMISSED WITH PREJUDICE as to those Defendants.

3. Costs and disbursements to Defendants Hyundai Motor Corporation, Hyundai Motor America, Inc. and Mitsubishi Motor Sales of America, Inc.

4. The only remaining claims are Counts V and VI as to Defendant Albers.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: _____

_____
Marilyn J. Justman
Judge of District Court

(2)

Supreme Court, U.S.
FILED
JUL 28 1997
CLERK

No. 96-2032

In The

Supreme Court of the United States

October Term, 1996

ROBERT C. SCHLOTZ AND CINDY J. SCHLOTZ,

Petitioners,

v.

HYUNDAI MOTOR COMPANY, A SOUTH KOREAN CORPORATION; HYUNDAI MOTOR AMERICA, INC., A CALIFORNIA CORPORATION; MITSUBISHI MOTOR SALES OF AMERICA, INC., A DELAWARE CORPORATION, AND WALTER CARL ALBERS,

Respondents.

On Petition For A Writ Of Certiorari To The Minnesota Court Of Appeals

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Minnesota Court of Appeals held, in Petitioners' words, that "Minn. Stat. § 169.685, subd. 4 barred [their] seat belt claim and the defective seat back claim." (Pet. 5) Thus, while the Court also addressed an issue of federal preemption, its decision is firmly based on its reading of a Minnesota evidentiary statute – an independent and adequate state law ground. That means this Court has no jurisdiction in this case.

Petitioners try to avoid the jurisdictional bar with a constitutional spin on the Minnesota state law question. But the Minnesota Court did not address any federal constitutional challenge to the statute. In truth, Petitioners made no serious federal constitutional challenge below. Anyway, the constitutional argument is fanciful. Minnesota is entitled to enact and apply evidentiary rules of general application, even if they may result in a practical bar on some claim. There is no constitutional infraction in that. In essence, Petitioners ask the Court to address a constitutional argument that they never adequately raised, that was never addressed below, that has limited significance in Minnesota and none elsewhere, and that on the merits is doomed. That compels denial of review.

As to the preemption issue, the Court can reach it only if the independent state law ground fails – if the Court finds a sufficient (and sufficiently preserved) federal question in the state law issue, and resolves it for Petitioners. There is no realistic chance that will happen. That, again, compels denial of review.

In any event, there would be no reason to address the preemption question even if there were jurisdiction. The Minnesota Court of Appeals found that the Supremacy Clause forbids a state common-law claim that takes away a restraint system option that a federal regulation specifically granted, after the regulatory agency determining that options – not a rule requiring any particular restraint

system – best served the federal safety goal.[1] That decision accords with every federal decision on point, and a host of state appellate decisions. It is, in fact, compelled by this Court's own decisions for nearly a century. The few scattered cases that disagree do not create a conflict that warrants review.

Especially in this case. In the vast majority of cases where the FMVSS 208 preemption issue has arisen, the case has involved the question whether federal law preempts a claim that the automobile was defective for lack of an airbag. Petitioners urge that the body of "no airbag" case law makes this case appropriate for review, even though the decision below concerns a factually distinct claim: whether an automobile should have had a manual lap belt in addition to a fully passive two-point belt system. But that is double talk. Petitioners below urged that the "no airbag" case law had no bearing on this case: the "cases and the[ir] analysis do not apply here," Petitioners said. Brief of Appellants, *Schlotz v. Hyundai Motor Co.*, No. C5-96-1207, at 22. They cannot then urge here that those cases make consideration of this one proper.

Just last spring, the Court declined to review the preemption issue in a "no lap belt" case – raised by essentially (in fact, largely verbatim) the same petition. *Zimmerman v. Volkswagen of America, Inc.*, 920 P.2d 67 (Idaho 1996), *cert. denied*, 117 S. Ct. 1245 (March 17, 1997). There is, if anything, less reason to review this case than there was to review *Zimmerman*. *Zimmerman* was decided by a highest state court; here, the decision is by an

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[1] Federal Motor Vehicle Safety Standard 208 ("FMVSS 208"), 49 C.F.R. § 571.208. *See* 49 Fed. Reg. 28962 *et seq.* (1984). The standard was adopted by the Department of Transportation ("DOT") and the National Highway Traffic Safety Administration ("NHTSA"), pursuant to their mandate under the National Traffic and Motor Vehicle Safety Act ("Safety Act"). 49 U.S.C. § 30102 *et seq.* (previously codified at 15 U.S.C. § 1381 *et seq.*).

intermediate state appellate court. Moreover, since *Zimmerman* other courts (including the Ninth Circuit, the Michigan Court of Appeals and the Minnesota Court here) have joined the already huge body of law finding preemption, making the law even more uniform than it was when the Court denied the petition in *Zimmerman*.

The petition should be denied.

REASONS FOR DENYING THE PETITION

The Petition seeks the Court's review of a federal preemption question. (Pet. 25) Almost as an afterthought, the Petition says the Court "should also consider the Minnesota Supreme Court's decision that the seat belt gag rule enacted in 1963 can constitutionally bar the Schlotzes' common law claims."[2] (*Id.*) That is backward. This Court has no jurisdiction to review a state court's decision on a federal question if there is an adequate state law ground for the decision. Accordingly, before the Court even can consider preemption, it must find in the state law question a constitutional issue, and then hold that it destroys the state law ground. Where Petitioners did not properly raise the issue below, the state court did not address it, and it is insignificant anyway, there is no prospect of eliminating the state law ground – a prerequisite to jurisdiction. That alone compels denial of review.

Even apart from the jurisdictional bar, the preemption decision in this case does not warrant review.

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[2] The constitutionality of the state law is such an afterthought that Petitioners did not even set forth the law they challenge in the Statutory Provisions Involved section of their brief. *See* S. Ct. Rule 14.1(f).

I. THE COURT HAS NO JURISDICTION BECAUSE THERE IS AN INDEPENDENT AND ADEQUATE STATE LAW GROUND FOR THE DECISION.

A. The Ruling That State Law Bars Petitioners' Action Forecloses Review Of The Separate Preemption Ground.

This Court sits to decide real questions, not issue advisory opinions. Accordingly, this Court has long held it has no jurisdiction to review a state court's determination of a federal question where the decision rests on an independent and adequate state law ground.

> If the judgment below rested on an independent and adequate state ground, the writ of certiorari should be dismissed as improvidently granted, *Wilson v. Loew's Inc.*, 355 U.S. 597 (1958), for "[o]ur only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. ***We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.***" *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945).

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 566 (1977) (emphasis added); *see also Lambrix v. Singletary*, 117 S. Ct. 1517, 1522 (1997) (Court "lack[s] jurisdiction to review . . . independently supported judgments on direct appeal: since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.").

Here, the judgment rests both on preemption grounds and on the Minnesota Court of Appeals' determination that, preempted or not, under Minnesota's own statutory evidence rule, Petitioners' claim fails. As Petitioners put it, "[t]he court also found that the [Minnesota]

seat belt gag rule destroyed the Schlotzes' common law crashworthiness claims." (Pet. 6) That state-law ruling is an independent ground, and the judgment stands under it regardless of any decision this Court might adopt on the preemption issue. There is, accordingly, no jurisdiction to review the judgment below.

B. Petitioners' Failure To Adequately Raise A Federal Constitutional Challenge To Minnesota's Application Of Its Own Statute Forecloses Review.

Petitioners try to avoid the jurisdictional bar on their main issue, by conjuring up an equal protection problem with the Minnesota Court's interpretation of Minn. Stat. § 169.685, subd. 4. But Petitioners concede that "the court of appeals did not address the Schlotzes' constitutional challenges." (Pet. 6) Thus, there is – literally – no decision to review.

The Court generally "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision [the Court] ha[s] been asked to review." *Adams v. Robertson*, 117 S. Ct. 1028, 1029 (1997) (*per curiam*; dismissing writ as improvidently granted); *see also Heath v. Alabama*, 474 U.S. 82, 87 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-18 (1983); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434-35 (1940). Accordingly, "[w]hen the highest state court is silent on the federal question before [it], [the Court] assume[s] that the issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption, by demonstrating that the state court had a 'fair opportunity to address the federal question that is sought to be presented here.' " *Adams*, 117 S. Ct. at 1029 (citations omitted). Supreme Court Rule 14.1(g)(i) tells Petitioners how to meet that burden: specify "the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised;

the method and manner of raising them and the way in which they were passed on by those courts. . . . "

Here, Petitioners have not specified, in accordance with Rule 14.1(g)(i), where and how they made their federal equal protection challenge to Minn. Stat. § 169.685, subd. 4. And the truth is, Petitioners made no real federal constitutional challenge at all. Petitioners' Brief in the Court of Appeals made a perfunctory equal protection argument, but it was directed at the Minnesota constitution and "Minnesota's equal protection test." Brief of Appellants at 42. Petitioners relied on Minnesota, not federal, cases. *Id.* at 41-45. Their brief made passing reference to federal equal protection, but made no mention of the U.S. Supreme Court cases and principles Petitioners now rely on. In fact, the only federal authority Petitioners discussed was *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), urged as support not for a federal constitutional argument, but for the argument that, as a matter of statutory interpretation, Minn. Stat. § 169.685, subd. 4 should not be read to affect unintended "statutory abrogation" of common-law rights.[3] Brief of Appellants at 39.

In the end, Petitioners attack a straw man here: a decision by a different court, in a different case, after the decision here, and on which the decision here necessarily could not have been based. (Pet. 25-28 [citing *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997)]) The time for petitioning in *Olson* has passed. There is no reason to revive it through the back door, via a case that does not address the issue at all.

In sum, Petitioners seek review of an issue that was not fairly presented to the Court of Appeals, and that was

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[3] *See Adams*, 117 S. Ct. at 1030 ("The discussion of 'a federal case, in the midst of an unrelated argument, is insufficient to inform a state court that it has been presented with a claim' ") (quoting *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 n.9 (1987)).

not decided by that Court, much less by the highest court of the state. There is, accordingly, no "adequate factual and legal record" to "assist [the Court] in [its] deliberations" and "aid in [its] understanding of the [Minnesota statute] as a predicate to [the Court's] assessment of [its] constitutional adequacy." *Adams*, 117 S. Ct. at 1031. The Court should deny certiorari.

C. In Any Event, The New-Found Federal Constitutional Argument Is Not Significant.

On the merits, Petitioners' constitutional argument is muddled. In essence, Petitioners propose that Minnesota cannot, as a matter of its own state policy, determine rules of evidence governing evidence about seat belts. That is, at the outset, an odd proposition. A state is constitutionally entitled to set its own rules of evidence, even if those rules may adversely affect some cases. *See, e.g., Montana v. Egelhoff*, 116 S. Ct. 2013, 2017, 2022-23 (1996) ("any number of familiar and unquestionably constitutional evidentiary rules . . . authorize the exclusion of relevant evidence" and "the introduction of relevant evidence can be limited by the State for a 'valid' reason") (plurality opinion); *Marshall v. Lonberger*, 459 U.S. 422, 438 n.6 (1983). That is all the Minnesota statute does: it even-handedly excludes evidence about installation or use of seat belts – by either party – in automotive litigation. That rule may have the effect of precluding some actions or defenses, both ways, but there is no constitutional affront in that. *See Egelhoff*, 116 S. Ct. at 2071 n.1.

Petitioners object that a purpose behind the rule – to "shield manufacturers from lawsuit should state-mandated seat belts ultimately result in injuries to motorists" (*Olson*, 558 N.W.2d at 495) – no longer is valid. Apparently, the argument is that now the federal government, not the state government, requires seat belts, so the purpose fails. But to the extent Petitioners made an equal

protection challenge below, that was not it.[4] Anyway, Petitioners do not quarrel with the proposition that protection of a manufacturer from liability for following the law's mandate is a rational exercise of state power; it should not matter, then, that the mandate's source is now federal, not state, law. *See Heller v. Doe*, 509 U.S. 312, 319-20, 324 (1993) (legislature "need not actually articulate at any time the purpose or rationale supporting its classification. Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification"; "statutory classification fails rational-basis review only when it rests on grounds wholly irrelevant to the achievement of the State's objective") (citations omitted).[5]

Indeed, there is an irony to Petitioners' argument. In opposing preemption, Petitioners urge that the Safety

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[4] Rather, below Petitioners urged that the statute's purpose was (1) "impossible to evaluate;" and (2) maybe was to prevent injured people from confronting contributory negligence arguments because they didn't buckle up, and so did not justify application of the statutory ban on seat belt evidence to crashworthiness claims. Brief of Appellants at 44. Petitioners said nothing whatever about the purpose they now address: to protect manufacturers from liability when they followed the law's requirements for installing seat belts.

[5] *See also Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) ("Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational") (citations omitted); *Bowen v. Gilliard*, 483 U.S. 587, 601 (1987) ("A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.") (quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970)).

Act's "savings clause" permits states to decide for themselves whether to permit common-law juries to judge what seat belts should be installed, and whether the federal restraint system options are appropriate. Pp. 25-28, below. Yet, when Minnesota decides as a matter of state policy not to allow any inquiry into seat belt choices, Petitioners insist that the same savings clause forecloses that state decision: "the Federal government – via the Safety Act and its regulations – now sets the appropriate standards and liability," Petitioners argue. (Pet. 26) "Congress' decision to create universal safety regulations," Petitioners say, "now dictates the appropriate liability." (Pet. 27; *see also id.* at 29) ("[I]t is Congress, not the State of Minnesota, which now prescribes the appropriate seat belts."). Petitioners cannot have it both ways. The Safety Act cannot both let the states decide whether to permit claims, and dictate what decision they make.

As to the argument about timing – the fact that the statute preceded both the Safety Act and crashworthiness liability (Pet. 27) – Petitioners have it backward. The statute set state policy about seat belts, and prohibited seat belt evidence offered by any party, before any crashworthiness cause of action existed. Thus, Petitioners have not been deprived of a crashworthiness cause of action by the statute (Pet. 26); they never had one. Minnesota adheres to the universal rule that the common law may not abrogate a legislative rule. *State v. DeWitt*, 389 N.W.2d 722, 726 (Minn. 1986) ("It is not the function of the courts to frustrate the clearly expressed will of the legislature."). Its adherence to that rule raises no constitutional problem.

Finally, whatever the merits of Petitioners' arguments about Minn. Stat. § 169.685, subd. 4, the issue is not one worthy of review. A decision in this case, either way, would have limited practical effect in Minnesota, and none elsewhere. The constitutionality of a limited application of a Minnesota rule of evidence simply does not

present a substantial question that merits this Court's attention.

II. THERE WOULD BE NO REASON TO REVIEW THE PREEMPTION ISSUE, EVEN IF THERE WERE JURISDICTION.

Over 100 courts – including every federal circuit to address the question,[6] over a dozen state appellate courts,[7]

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[6] *Harris v. Ford Motor Co.*, 110 F.3d 1410 (9th Cir. 1997); *Montag v. Honda Motor Co.*, 75 F.3d 1414 (10th Cir.), *cert. denied*, 117 S. Ct. 61 (1996); *Pokorny v. Ford Motor Co.*, 902 F.2d 1116 (3d Cir.), *cert. denied*, 498 U.S. 853 (1990); *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990); *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990); *Wood v. General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988), *cert. denied*, 494 U.S. 1065 (1990); *see also Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291 (7th Cir. 1997) (finding preemption of common-law claim under FMVSS 212).

[7] *Zimmerman v. Volkswagen of America*, 920 P.2d 67 (Idaho 1996), *cert. denied*, 117 S. Ct. 1245 (1997); *Cooper v. General Motors Corp.*, 1996 WL 272362 (Miss. May 23, 1996); *Martinez v. Ford Motor Co.*, ___ N.W.2d ___, 1997 WL 341786 (Mich. App. June 20, 1997); *Minton v. Honda of America*, 1996 WL 402070 (Ohio Ct. App. July 19, 1996), *certif. granted*, 670 N.E.2d 1007 (Ohio Oct. 23, 1996); *Cellucci v. General Motors Corp.*, 676 A.2d 253 (Pa. Super. Ct.), *appeal granted*, 684 A.2d 555 (Pa. Oct. 22, 1996); *Dykema v. Volkswagenwerk A.G.*, 525 N.W.2d 754 (Wis. App. 1994), *cert. denied*, 116 S. Ct. 60 (1995), *reh'g denied*, 116 S. Ct. 549 (1995); *Miranda v. Fridman*, 647 A.2d 167 (N.J. Super. Ct. App. Div.), *certif. denied*, 649 A.2d 1291 (N.J. 1994); *Panarites v. Williams*, 629 N.Y.S.2d 359 (N.Y. App. Div. 1995); *Marrs v. Ford Motor Co.*, 852 S.W.2d 570 (Tex. Ct. App. 1993); *Boyle v. Chrysler Corp.*, 501 N.W.2d 865 (Wis. Ct. App.), *rev. denied*, 510 N.W.2d 137 (Wis. 1993); *Nissan Motor Corp. v. Superior Court (Meier)*, 212 Cal. App. 3d 980 (1989), *cert. denied*, 494 U.S. 1066 (1990); *Gardner v. Honda Motor Co.*, 536 N.Y.S.2d 303 (N.Y. App. Div. 1988), *motion for reargument denied*, 74 N.Y.2d 715 (1989); *Wickstrom v. Maplewood*

and scores of federal district courts[8] – have held that the Safety Act and FMVSS 208 preempt claims that a vehicle

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Toyota, Inc., 416 N.W.2d 838 (Minn. App. 1987), *cert. denied*, 487 U.S. 1236 (1988).

[8] *E.g.*, *Courtney v. Mitsubishi Motors Corp.*, 926 F. Supp. 223 (D. Mass. 1996); *Martin v. Ford Motor Co.*, 914 F. Supp. 1449 (S.D. Tex. 1996); *Folkes v. Volkswagen of America*, No. 94-D-977 (D. Colo. June 11, 1997); *Thomas v. General Motors Corp.*, No. 2:96CV38 (E.D. Tex. Dec. 3, 1996); *Marcum v. General Motors Corp.*, No. 93-40 (E.D. Ky. Nov. 21, 1996); *Klugerman v. Nippon Seiko, K.K.*, No. 94-11900-NG (D. Mass. Nov. 20, 1996); *Wiley v. General Motors Corp.*, No. 96-1692 (JHG) (D.D.C. Nov. 15, 1996); *Kaiser v. Fuji Heavy Industries Ltd.*, No. 95-B-633 (D. Colo. Sept. 24, 1996); *Schuyler v. Volkswagen A.G.*, No. 4:96ev25 (E.D. Va. Aug. 28, 1996); *Taylor v. General Motors Corp.*, 1996 WL 671648 (N.D. Miss. Aug. 6, 1996); *Waters v. Ford Motor Co.*, 1996 WL 114791 (E.D. Pa. Mar. 13, 1996); *Sieck v. General Motors Corp.*, 1996 WL 426818 (W.D. Pa. Mar. 5, 1996); *Schroeder v. General Motors Corp.*, No. 8:CV96-591 (D. Neb. Feb. 7, 1996); *Johnson v. General Motors Corp.*, 889 F. Supp. 451 (W.D. Okla. 1995); *Hill v. General Motors Corp.*, No. 94-AR0088-S (N.D. Ala. Nov. 15, 1995); *Beeman v. Lovelace*, 1995 WL 813722 (W.D. Okla. Nov. 2, 1995); *Tammen v. General Motors Corp.*, 857 F. Supp. 788 (D. Kan. 1994); *Gills v. Ford Motor Co.*, 829 F. Supp. 894 (W.D. Ky. 1993); *Heath v. General Motors Corp.*, 756 F. Supp. 1144 (S.D. Ind. 1991); *Cerniak v. Nissan Motor Co.*, 1991 WL 147366 (N.D. Ill. July 26, 1991); *Pak v. Chrysler Motors Corp.*, 1990 WL 198821 (E.D. Pa. Dec. 3, 1990), *aff'd*, 941 F.2d 1200 (3d Cir. 1991); *Dallas v. General Motors Corp.*, 725 F. Supp. 902 (W.D. Tex. 1989); *Hunt v. Ford Motor Co.*, Prod. Liab. Rep. (CCH) ¶ 12,292 (N.D. Ala. Mar. 30, 1989); *Kelly v. General Motors Corp.*, 705 F. Supp. 303 (W.D. La. 1988); *Kolbeck v. General Motors Corp.*, 702 F. Supp. 532 (E.D. Pa. 1988); *Surles v. Ford Motor Co.*, 709 F. Supp. 732 (N.D. Tex. 1988); *Heftel v. General Motors Corp.*, 1988 WL 19615 (D.D.C. Feb. 23, 1988); *Hunter v. General Motors Corp.*, Prod. Liab. Rep. (CCH) ¶ 12,039 (D. Conn. Dec. 27, 1988); *Howard v. American Motors Corp.*, Prod. Liab. Rep. (CCH) ¶ 11,955 (S.D. Tex. July 26, 1988); *Schick v. Chrysler Corp.*, 675 F. Supp. 1183 (D.S.D. 1987); *Staggs v. Chrysler Corp.*, 678 F. Supp. 270 (N.D. Ga. 1987); *Hughes v. Ford Motor Co.*, 677 F. Supp.

is defective because it has one restraint system option granted by FMVSS 208, instead of a different FMVSS 208 option. The Court of Appeals joined that wealth of authority. This Court has declined to review the FMVSS 208 preemption issue eleven times, including one case, based on essentially the same petition, just last March. *Zimmerman v. Volkswagen of America*, 920 P.2d 67 (Idaho 1996), *cert. denied*, 117 S. Ct. 1245 (1997). There is no reason to review it now, particularly in this case.

A. The History Of Federal Regulation Of Restraint Systems.

1. The Safety Act.

In 1966 Congress enacted the Safety Act. The Act directs the DOT and its subdivision, NHTSA, to issue federal motor vehicle safety standards that are "practicable," that "meet the need for motor vehicle safety," and that apply throughout the country. 15 U.S.C. § 1392(a).[9]

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76 (D. Conn. 1987); *Wattelet v. Toyota Motor Corp.*, 676 F. Supp. 1039 (D. Mont. 1987); *Bass v. General Motors Corp.*, 1987 WL 54449 (W.D. Tex. 1987); *Vasquez v. Ford Motor Co.*, 1986 WL 18670 (D. Ariz. Nov. 18, 1986); *Cox v. Baltimore County*, 646 F. Supp. 761 (D. Md. 1986); *Baird v. General Motors Corp.*, 654 F. Supp. 28 (N.D. Ohio 1986); *Vanover v. Ford Motor Co.*, 632 F. Supp. 1095 (E.D. Mo. 1986).

[9] The Safety Act was recodified in 1994 so all "laws related to transportation [appear] in one comprehensive title," and moved from Title 15 to Title 49 of the United States Code. H.R. Rep. No. 103-108, 103d Cong., 2d Sess. 3 (1994), *reprinted in* 1994 U.S.C.C.A.N. 818, 820. In the course of the recodification, there were some "technical improvements" to language to promote "clarity" and "consistency," and avoid "surplusage;" "precautions [were] taken against making substantive changes in the law." *See id.* 49 U.S.C.A. § 30103, Historical and Statutory Notes. The preemption cases and the Petition here discuss the provisions as codified in Title 15 (though some early cases refer

The standards were to be "strong and adequately enforced," and "*uniform* throughout the country." S. Rep. No. 1301, 89th Cong., 2d Sess., *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720 (emphasis added); *see* H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966).

The Safety Act contains a preemption clause – § 1392(d) (now in 49 U.S.C. § 30103(b)). It permits a state to "prescribe or continue in effect" a "standard applicable to the same aspect of performance of a motor vehicle or item or equipment" as an FMVSS, but "only if the standard is identical" to the FMVSS. Or, as the statute provided before the recodification, "whenever" DOT establishes a federal standard, "no State or political subdivision of a State shall have any authority either to establish, or to continue in effect" "any" state "standard" as to "the same aspect of performance" not "identical to the Federal standard." 15 U.S.C. § 1392(d). The Act also recites that compliance with a federal standard "does not exempt a person from liability under common law." 49 U.S.C. § 30103(e) (1995) (previously in 15 U.S.C. § 1397(k)). But that provision is not denominated a preemption clause; structurally is not part of the preemption clause; and on its face says nothing about preemption, much less purports to preclude preemption of claims based on a non-identical common-law standard that directly conflicts with a federal standard. Pp. 25-28, below.

2. FMVSS 208.

FMVSS 208 is the federal standard governing restraint systems. Options and flexibility have been at the heart of FMVSS 208 for over a quarter century. Beginning in 1971, FMVSS 208 granted manufacturers three options: (1) passive restraints for all crashes; (2) passive restraints

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to § 1397(k) as § 1397(c), its pre-1988 designation). To avoid confusion, we use the Title 15 designations as well.

for head-on crashes plus manual belts; or (3) manual three-point seat belts. 49 C.F.R. § 571.208, S4.1.2.1.-.3 (1971).[10] Passive restraints work without any action by the user; active restraints, like manual belts, require user action – buckling up.

FMVSS 208 did not mandate which form of passive restraint was to be installed by a manufacturer who chose to put in passive restraints. Instead, it set forth performance requirements for those restraint options, and, as to passive belts, provided in effect a fourth option: A manufacturer could install "a seat belt assembly that requires no action by vehicle occupant," that is, an automatic belt system, to "meet the crash protection requirements of any" of the first three options, and *"in place of any seat belt assembly otherwise required by that option."* 49 C.F.R. § 571.208, S4.5.3 (1971) (emphasis added). Thus, a manufacturer could opt to comply with FMVSS 208 by installing passive belts that met the performance requirements of any of its three options, without any manual belts at all.

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[10] In the early 1970s, DOT required vehicles "to carry either passive restraints or [manual] lap and shoulder belts coupled with an 'ignition interlock' that would prevent starting the vehicle if the belts were not connected." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 33, 35 (1983). The public did not like ignition interlocks. Therefore in 1974 Congress enacted 15 U.S.C. § 1410b, which outlawed the "ignition interlock" standard and mandated that manufacturers should have restraint system options, specifically including a manual belt option. Congress also mandated that DOT could grant manufacturers the option to install different types of automatic restraint systems instead of manual seat belts, whatever the "technology may come up with." 120 Cong. Rec. 27822 (1974) (Rep. Wyman, author of amendment that became § 1410b); H.R. Rep. No. 1452, 93d Cong., 2d Sess., *reprinted in* 1974 U.S.C.C.A.N. 6084, 6108.

3. NHTSA's Approval Of The System In The Precis.

"[T]he safety benefits of wearing seat belts are not in doubt. . . . " *State Farm*, 463 U.S. at 52. But many people did not use their belts, and accordingly, beginning in the 1970s, NHTSA sought to encourage passive restraints.

FMVSS 208's Option 2 authorizes passive restraints that, together with manual belts, meet the performance requirements of FMVSS 208, S5.1. FMVSS 208, S5.1 sets forth injury criteria for vehicles hitting a fixed collision barrier at 30 m.p.h., at an angle up to 30 degrees. In 1973, Volkswagen developed a passive shoulder belt system which, with knee bolsters and without any lap belt, met those criteria. It was a real breakthrough. The system outperformed traditional manual lap and shoulder belts; for example, the shoulder belt was not subject to "submarining, in the form of movement of the lap belt [there was none] over the . . . iliac crest into the soft abdominal tissue," a significant advantage. VW Petition for Rulemaking, 208-PRM-14, pp. 7-9 (1973).

In 1974, NHTSA ruled that S4.5.3 specifically permitted the use of the two-point VW system to meet the performance requirements of option two. 39 Fed. Reg. 3834 (1974). As for the lack of a manual lap belt, NHTSA affirmed that S4.5.3 expressly permitted the two-point VW automatic belt system "to replace the required [manual] seat belt assemblies." *Id.* In fact, NHTSA concluded, "option two exists . . . to accommodate the introduction of passive restraint systems like Volkswagen's." *Id.* As NHTSA's Chief Counsel explained "the *'passive belt substitution' provision of S4.5.3* is available to a passive belt system *without a lap belt in place of the lap belt specified by S4.1.3.*" (Hyundai A. 24) (emphasis added).[11]

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[11] That view was stated in a letter, in the public record, that was before the court below, along with others affirming the same thing. (Hyundai A. 15-22) An interpretation of a

Over the years, NHTSA revised FMVSS 208 to require passive restraints, and to eliminate the three-point manual belt option. NHTSA deferred the beginning of the mandatory passive restraint phase-in from time to time, but always preserved the manufacturer's option as to which passive restraint to install. In particular, Secretary after Secretary reaffirmed, protected and praised the option to install the two-point VW system. Secretary Coleman noted that, to date, only "two passive restraint systems" appeared workable, airbags and the VW "shoulder belt and knee bolster system." 41 Fed. Reg. 24070, 24070 n.2, 24072 (1976). Secretary Adams noted that 65,000 VWs were equipped with that system, and lauded it as "a proven means of meeting a passive restraint requirement." 42 Fed. Reg. 34295 (1977).

Therefore, FMVSS 208 expressly authorizes a two-point automatic shoulder belt system with knee bolsters that meets FMVSS 208's performance requirements, and expressly grants a manufacturer the option to use that system "in place of" a standard Option 2 system with lap belts. Indeed, before Secretary Dole mandated a phase-in of passive restraints beginning in 1987, the "vast majority of manufacturers" exercised the option to install manual belt systems, not passive restraints in any form. 41 Fed. Reg. at 24070. The two-point passive belt system was a rare, welcome – and clearly the leading – exception. *Id.* at 24074.

4. Secretary Dole's Final Rule.

In 1984, Secretary Dole undertook a comprehensive review of all restraint systems, 49 Fed. Reg. 28962-63, 28984-86, 28991, 28996 (1984), and reached the final rule that applied to the Precis here. The rule mandated a

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regulation by the agency that adopted it and is charged with implementing it is due "substantial deference." *Martin v. Occupational Safety & Health Comm'n*, 499 U.S. 144, 150 (1991).

phase-in of passive restraints from 1987-90. Secretary Dole determined not to mandate any particular form of passive restraint at any time. She reasoned that each passive restraint system had different virtues, and concluded that mandating a single type of passive restraint would risk "killing or seriously retarding development" of restraint systems. 49 Fed. Reg. at 29001.

Accordingly, Secretary Dole determined to provide "latitude" to industry as to what passive restraints to install. "Flexibility" was the benchmark. *Id.* at 28997, 29000. Thus, manufacturers were to continue to have the same options to comply with FMVSS 208's passive restraint requirements they always had, *id.* at 28997, specifically including the option to choose the two-point VW system. The Secretary noted that, by then, that system had been installed in over 390,000 VW Rabbits (*id.* at 28965); that its usage rate was 50-90% (*id.* at 28984); and, it was available "immediately," of particular importance during the phase-in (*id.* at 28999).

In sum, flexibility and options are the heart of FMVSS 208, and have been for over 25 years. From the beginning FMVSS 208 gave manufacturers the choice of what passive restraint to install in cars with passive restraints, and the final rule granted that same option, specifically including the option to install the two-point system, proven and lauded as it was.[12]

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[12] In 1991, Congress amended the Safety Act to prospectively require airbags in all passenger cars. Congress ordered the Secretary to promulgate an amendment to FMVSS 208 requiring airbags in 95% of all cars built in the 1997 model year, and 100% of cars built in the 1998 model year. *See* Pub. L. No. 102-240, § 2508; 58 Fed. Reg. 46551-02. In amending the Safety Act, however, Congress made clear that its judgment that airbags should be required in the regulations of the future was not to change the preemption case law as to the regulations of the past. Pub. L. No. 102-240, § 2508(d) (amendment "shall [not] be construed by any . . . court as indicating an intention by

Hyundai exercised that federally-granted option and installed the two-point system (actually, an improved version of) it in the Precis. (Hyundai A. 59) Petitioners seek this Court's leave to make that option unlawful, and punish its exercise, after the fact.[13]

B. There Is No Significant Conflict Or Urgency On The Question Whether FMVSS 208 Preempts "No Lap Belt" Claims.

Petitioners' lead argument (Pet. 7) proposes that there is a "growing conflict among the federal courts of appeal[s] and the state courts of last resort over" the question presented in this case: whether the Safety Act expressly preempts "no lap belt" claims. In fact, Petitioners cite only six other cases that have ever considered the issue here – whether "no lap belt" claims are preempted by the Safety Act and FMVSS 208.[14]

Congress to affect, change, or modify in any way the liability, if any, of a motor vehicle manufacturer under applicable law relative to vehicles with or without inflatable restraints").

[13] Actually, Petitioners insisted below that "this is not a no lap belt case." P. Memo in Opp. to Summary Judgment at 1; *see also* Brief of Appellants at 21-24, Reply Brief at 2. Here, in contrast, Petitioners say they claim that the vehicle was defective "because it lacked a driver's-side lap belt." (Pet. 4)

[14] Petitioners cite (Pet. 15-16): *Hernandez-Gomez v. Leonardo*, 917 P.2d 238 (Ariz. 1996) ("no lap belt" claim; no preemption in roll-over accident); *Ketchum v. Hyundai Motor Co.*, 49 Cal. App. 4th 1672 (1996) ("no lap belt" claim not preempted); *Alvarado v. Hyundai Motor Co.*, 908 S.W.2d 243 (Tex. App. 1995), *app. pending*, No. 95-0969 (Tex.) ("no lap belt" claim not preempted; appeal to Texas Supreme Court pending); *Dykema v. Volkswagenwerk AG*, 525 N.W.2d 754 (Wis. App. 1994), *cert. denied*, 116 S. Ct. 60 (1995), *reh'g denied*, 116 S.Ct. 549 (1995) ("no lap belt" claim preempted); *Miranda v. Fridman*, 647 A.2d 167 (N.J. App.), *certif. denied*, 649 A.2d 1291 (N.J. 1994) ("no lap belt" claim preempted).

Instead, Petitioners tally up cases that address different issues. By likening unlike cases, Petitioners suggest a conflict that is more imagined than real.

The Early Cases. Petitioners cite the early case law interpreting the Safety Act, and urge it is in conflict with the Court of Appeals' decision below. (Pet. 8-10) But that case law is not on point, and in fact is entirely irrelevant to the question whether "no lap belt" claims are preempted by FMVSS 208. Most of the cases do not address preemption, or mention it, but concern whether compliance with federal standards is, as a matter of state law, an absolute defense to a state law claim on the merits.[15] Indeed, many of the cited cases involved allegations of defects in vehicles designed and manufactured before *any* pertinent federal safety standards had been promulgated.

Where preemption was at issue, it was a different question entirely – whether the Safety Act occupied the entire field of motor vehicle safety. For example, *Larsen v. General Motors Corp.* concerned steering columns, as to which there was no on-point standard, and addressed only whether Congress had "acquire[d] exclusive jurisdiction in this field." 391 F.2d 495, 506 (1968). Thus, the cases hold, at most, that the Safety Act does not occupy the field, and so permits claims based on common-law standards that do not conflict with an FMVSS; none

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[15] *Knippen v. Ford Motor Co.*, 546 F.2d 993 (D.C. Cir. 1976); *Fox v. Ford Motor Co.*, 575 F.2d 774, 775 (10th Cir. 1978); *Stonehocker v. General Motors Corp.*, 587 F.2d 151, 156-57 (4th Cir. 1978); *Schwartz v. American Honda Motor Co.*, 710 F.2d 378, 383 (7th Cir. 1983); *Shipp v. General Motors Corp.* 750 F.2d 418, 421 (5th Cir. 1985); *General Motors Corp. v. Edwards*, 482 So. 2d 1176, 1198 (Ala. 1985); *Lollie v. General Motors Corp.*, 407 So. 2d 613, 617 (Fla. App. 1981), *rev. denied*, 413 So. 2d 876 (Fla. 1982); *Volkswagen of America, Inc. v. Young*, 321 A.2d 737, 746 (Md. 1974); *H.P. Hood & Sons, Inc. v. Ford Motor Co.*, 345 N.E.2d 683, 688 (Mass. 1976).

involved claims based on standards that directly conflict with an on-point FMVSS.[16]

Certainly none of the cases cited involved passive restraints, or the options and purposes behind FMVSS 208, or the direct conflict between those federal options and purposes and state claims that would take the options away. When the FMVSS 208 preemption issue does come up, the same courts have no problem distinguishing the cases, and finding preemption. *Compare, e.g., Pokorny v. Ford Motor Co.*, 902 F.2d 1116 (3d Cir.), *cert. denied*, 498 U.S. 853 (1990) ("no airbag" claim preempted), *with Dawson v. Chrysler Corp.*, 630 F.2d 950 (3d Cir. 1980), *cert. denied*, 450 U.S. 959 (1981) (compliance with FMVSS not complete defense to claim that vehicle was defective because of noncontinuous body frame); and *Montag v. Honda Motor Co.*, 75 F.3d 1414 (10th Cir.), *cert. denied*, 117 S. Ct. 61 (1996) ("no airbag" claim preempted), *with Fox v. Ford Motor Co.*, 575 F.2d 774 (10th Cir. 1978) (compliance with federal safety standards not complete defense to claim that rear-seat lap safety belt was defectively designed).

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[16] *See also Dawson v. Chrysler Corp.*, 630 F.2d 950, 957-58 (3d Cir. 1980), *cert. denied*, 450 U.S. 959 (1981) (no federal standard governed frame strength and rigidity); *Dorsey v. Honda Motor Co.*, 655 F.2d 650, 654, 656 (5th Cir. 1981), *cert. denied*, 459 U.S. 880 (1982) (vehicle met "certain federal" standards, but the standards were "unrelated to several of the design deficiencies" challenged); *Sours v. General Motors Corp.*, 717 F.2d 1511, 1516 (6th Cir. 1983) (no federal roof standard established at time car was designed); *Buccery v. General Motors Corp.*, 60 Cal. App. 3d 533, 541 (1976) (federal standard required head restraints for passenger cars, not trucks; plaintiff was injured in a truck; court held Congress had not occupied the field); *McMullen v. Volkswagen of America*, 545 P.2d 117, 120 (Ore. 1976) (no specific standard in issue); *Turner v. General Motors Corp.*, 514 S.W.2d 497 (Tex. App. 1974) (federal standard as to roof strength promulgated after car manufactured).

Thus, none of the early cases addresses passive restraints; or FMVSS 208; or an equipment requirement advanced by plaintiff that NHTSA specifically rejected; or the imposition of liability for exercising an option NHTSA specifically granted; or the direct conflict with federal law if such liability could lie. The cases are not on point, much less grounds for finding a conflict and the need for review.

The "No Airbag" Cases. To suggest mass confusion in the lower courts over the question presented here – and to raise the specter of "thousands of automobile design defect lawsuits pending throughout the nation" (Pet. 15) – Petitioners combine the decisions on the question whether "no airbag" claims are preempted by FMVSS 208 with the "no lap belt" cases. But Petitioners argued below that the "no airbag" cases are off point. The "cases and the[ir] analysis do not apply here," Petitioners urged. Brief of Appellants at 22. In fact, Petitioners derided as "erroneous" the "equation of this case with claims based on the absence of air bags." *Id.* at 18.

This Court has denied certiorari in recent years in every one of the eleven FMVSS 208 preemption cases in which review was sought.[17] In fact, in the most recent

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[17] *See Zimmerman v. Volkswagen of America, Inc.*, 920 P.2d 67 (Idaho 1996), *cert. denied*, 117 S. Ct. 1245 (March 17, 1997); *Montag v. Honda Motor Co.*, 75 F.2d 1414 (10th Cir.), *cert. denied*, 117 S. Ct. 61 (1996); *Tebbetts v. Ford Motor Co.*, 665 A.2d 345 (N.H. 1995), *cert. denied*, 116 S. Ct. 773 (1996), *reh'g denied*, 116 S. Ct. 1036 (1996); *Hyundai Motor Co. v. Phillip*, 639 So.2d 1064 (Fla. App. 1994); *cert. denied*, 513 U.S. 1111 (1995); *Dykema v. Volkswagenwerk AG*, 525 N.W. 2d 754 (Wis. App. 1994), *cert. denied*, 116 S. Ct. 60 (1995); *Pokorny v. Ford Motor Co.*, 902 F.2d 1116 (3d Cir.), *cert. denied*, 498 U.S. 853 (1990); *Nissan Motor Corp. v. Superior Court (Meier)*, 212 Cal. App. 3d 980 (1989), *cert. denied*, 494 U.S. 1066 (1990); *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990); *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), *cert. denied*, 494 U.S.

case – *Zimmerman* – the petition was the template for the petition here; the arguments here are lifted, verbatim, from that petition. *Compare* Petition for Writ of Certiorari, *Zimmerman v. Volkswagen of America*, No. 96-904 (filed Dec. 1996). Petitioners offer no reason to distinguish this case from *Zimmerman* and the ten other cases in which review was denied. Indeed, this case is far less "certworthy" than *Zimmerman*, because (1) it was decided by an intermediate appellate court (not the highest state court); (2) the judgment rests on an alternative state law ground; and (3) additional cases finding preemption make the decisions, if anything, more uniform than they were last spring.

In sum, review of this case would be an inappropriate use of this Court's limited resources.

C. The Court Correctly Resolved The Preemption Issue.

In finding that the Safety Act and FMVSS 208 preempt claims (like "no lap belt" claims) that would punish the exercise of one of FMVSS 208's options, the Minnesota Court of Appeals joined every federal court to address the question, and a host of state appellate courts. That was plainly correct.

1. Express Preemption.

a. The Meaning Of The Preemption Clause.

This Court's decision in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), eliminates any doubt about

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1065 (1990); *Wood v. General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988), *cert. denied*, 494 U.S. 1065 (1989); *Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838 (Minn. App. 1987), *cert. denied*, 487 U.S. 1236 (1990).

whether the safety "standards" referred to in the preemption provision of the Safety Act, 15 U.S.C. § 1392(d), include common-law standards. The Court in *Cipollone* held that a preemption clause forbidding "'requirement[s] or prohibition[s] . . . imposed under State law'" included common law duties. 505 U.S. at 519-24 (plurality) (citation omitted); *id.* at 548-49 (Scalia, J, joined by Thomas, J., concurring in part and dissenting in part.). The Court stated that it made no difference that the preemption clause did not include a specific reference to common-law claims. *Id.* at 521; *see also CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 661-76 (1993).

The Court's holding in *Cipollone* was premised on its long-held view that "[state] regulation can be as effectively exerted through an award of damages as through some form of preventive relief." 505 U.S. at 521 (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)); *see also Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 326 (1981) ("A system under which each State could, through its courts, impose . . . its own . . . requirements could hardly be more at odds with the uniformity contemplated by Congress"). And that holding was reaffirmed in 1996 in *Medtronic, Inc. v. Lohr*, where a majority of the Court explicitly endorsed *Cipollone*'s holding that the word "requirements" encompasses state law tort claims for purposes of federal preemption. 116 S. Ct. 2240, 2260 (1996) (Breyer, J., concurring); *id.* at 2263 (O'Connor, J., Rehnquist, C.J., and Scalia and Thomas, JJ., concurring in part and dissenting in part).

Here, the plain language of the Safety Act's preemption clause sweeps at least as broadly as the preempting language in *Cipollone*, and so also encompasses common-law claims like Petitioners'. Section 1392(d) permits state standards "only if" they are "identical" to an FMVSS – or, in the pre-recodification language, the clause takes away "any authority" of a state to enforce a non-"identical" standard. "Any authority" of the state means any state

authority, legislative, executive or judicial; the Act does not say that the legislative and executive branches cannot establish non-identical standards, but the judicial branch can. Common law standards are "standards," as this Court has repeatedly held.[18] Hence a common law action is based upon a "state standard," and must be; otherwise the action would be baseless, literally.

In sum, the state "standards" preempted by § 1392(d) include common-law standards. Petitioners' contrary contention does not merit review by this Court.

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[18] *CSX Transp.*, 507 U.S. at 664 ("Legal duties imposed . . . by the common law" fell "within the scope" of a preemption clause that barred any state "law, rule, regulation, order or *standard*") (emphasis added); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114-15 (1987) (referring to "safety standards" set by California product liability law); *International Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987) (recognizing the "possibility that [defendant] would have to meet a number of different standards" if sued, under different states' common law); *United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S. 392, 400 (1965) (referring to "common law standards"); *Shenker v. Baltimore & Ohio R.R.*, 374 U.S. 1, 11 (1963) (referring to "negligence standards of the common law"); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630-31 (1959) (referring to "standard of care" imposed by common law).

Indeed, "standard" in the Safety Act is necessarily at least as encompassing as "requirements" (the *Cipollone* language), because the reference to "requirement" in the third sentence of § 1392(d) would be meaningless otherwise. The third sentence allows states to impose a "requirement" as to vehicles purchased for their use, and so preserves the authority to impose such "requirements"; the first sentence's proscription of "standards" would otherwise have taken away that authority to impose "requirements." Moreover, in *Medtronic*, Justice Breyer uses "requirement" and "standard" synonymously. 116 S. Ct. at 2259.

b. The Meaning Of The Savings Clause.

Petitioners point to the Safety Act's so-called "savings" clause, 15 U.S.C. § 1397(k), and maintain that it shelters all common-law claims – even those that conflict with a federal standard and undermine the purposes behind it – from preemption. That ignores the structure and language of the savings clause, and this Court's teachings on the effect of savings clauses.

As to structure and language, the clause does not mention preemption. Indeed, the so-called savings clause is not denominated a preemption clause and structurally is not part of the preemption clause. On its face, the clause says nothing about preemption, much less purports to preclude preemption of claims based on a non-identical common-law standard that directly conflicts with a federal standard. Instead, it (and some of the legislative history) speaks to "compliance" as a defense.[19] That "compliance" language suggests that the so-called savings clause is not a statement on preemption at all. For as the First Circuit explained, whether compliance is a defense on the merits under state law is "entirely different" from preemption. *Wood*, 865 F.2d at 417. In fact,

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[19] Both the House and Conference Reports contain sections entitled "Preemption," but neither section discusses § 1397(k). *See* H.R. Conf. Rep. No. 1919, 89th Cong., 2d Sess. 16 (1966), *reprinted in* 1966 U.S.C.A.A.N. 2731, 2731-33; H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966). The House Report mentions § 1397(k) under the heading "Prohibited Acts and Exemption," and the Conference Report does not deal with it at all. Again, if Congress had intended § 1397(k) to be a sweeping exception to the preemption provision, it surely would have described it as such in these reports. *See Chisom v. Roemer*, 501 U.S. 380, 396 (1991). Rather, as its language indicates, § 1397(k) was added merely to clarify that the Safety Act did not create an affirmative defense of compliance with government standards or, as we next show, that the Safety Act was not intended to occupy the entire field of motor vehicle safety.

Petitioners' own cases – and their argument on the state court issue – treat the savings clause as a negation of a compliance defense. Pp. 8-9, above. Moreover, even treating § 1397(k) as a savings clause, on its face the clause "does not express an unambiguous intent to preserve a state suit that conflicts with a federal safety standard." *Wood*, 865 F.2d at 414; *accord Pokorny*, 902 F.2d at 1125; *Taylor*, 875 F.2d at 825 n.18; *see also Schick*, 675 F. Supp. at 1185.

As to this Court's teachings, the Court has never interpreted a savings clause – even one that specifically mentions preemption – to permit state law claims that directly conflict with federal law. For savings clauses are meant "not to nullify other parts of the Act, or to defeat rights or remedies given by preceding sections – but to preserve all existing rights which were not inconsistent with those created by the statute." *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 129 (1915). A general savings clause serves to make clear Congress' intent not to "occupy the field." *Chicago & N.W. Transp. Co.*, 450 U.S. at 328 (savings clause included because without it, "it might have been claimed that, Congress having entered the field, the whole subject . . . had been withdrawn from the jurisdiction of the state courts") (quoting *Pennsylvania R.R.*, 237 U.S. at 130).

That is not to say, however, that § 1397(k) is a nullity, or that § 1392(d) preempts every claim "whenever a Federal safety standard is in place." (Pet. 21). Rather, while § 1392(d) expressly preempts conflicting common-law claims, § 1397(k) makes clear that there is no occupation of the field, and expressly preserves all non-conflicting common-law claims, including claims based on manufacturing defects, notwithstanding compliance with federal standards; claims based on state standards, with respect to aspects of performance not covered by federal standards, notwithstanding compliance with federal standards; and claims based on state standards with respect to aspects of performance that are covered by federal

standards, but do not conflict with federal standards, again notwithstanding compliance with those standards. *See, e.g., Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777, 783 (3d Cir. 1992) (federal standard covered lighting on trucks; § 1397(k) saved claims based on common-law standard calling for additional lighting if it did not interfere with light called for by federal standard). In fact, a conflict between a common-law claim and a federal standard is a "rare event indeed." *Wood*, 865 F.2d at 402 n.9.

But when it occurs, a general savings clause cannot be read to save the conflicting state law. Thus in *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907), a federal act contained a broad savings clause that purported to save "the remedies now existing at common law or by statute." *Id.* at 446. This Court held preempted an existing but conflicting common-law claim in the face of that savings clause, because a savings clause "cannot in reason be construed as continuing . . . a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act." *Id.* That has been the law throughout this century, even when an act has no preemption clause at all. *See Ouellette*, 479 U.S. at 485, 493-94, 505 (savings clause provided "[n]othing in this section shall restrict any right which any person . . . may have under any statute or common law;" Senate Report said "compliance with . . . Act would not be a defense to a common law action for- . . . damages"; conflicting common law claims preempted; Congress could not have "intended to undermine . . . [the Act] through a general savings clause"); *accord Chicago & N.W. Transp. Co.*, 450 U.S. at 328-31; *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 210-11 (1986); *Arrow Transp. Co. v. Southern Ry.*, 372 U.S. 658, 671 n.22 (1963); *T.I.M.E. Inc. v. United States*, 359 U.S. 464, 473-74 (1959); *Pennsylvania v. Nelson*, 350 U.S. 497, 501 n.10, *reh'g denied*, 351 U.S. 934 (1956); *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, 1086 (9th Cir. 1979), *aff'd mem.*, 445 U.S. 947 (1980); *see also*

John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 99 (1993) (savings clause means that saved state law "generally is not displaced, but 'where [it] stands as an obstacle to the accomplishment of the full purposes and objectives of Congress,' federal preemption occurs") (quoting *Silkwood v. Kerr-McGee*, 464 U.S. 238, 248 (1984)).

Thus, under settled law, § 1397(k) was added to the Safety Act not to defeat the statutory goal of creating a set of nationally uniform motor vehicle safety standards, but rather to indicate Congress' intent not to preempt the remainder of the field of motor vehicle safety not covered by and not inconsistent with those federal standards.[20]

2. Implied Preemption.

Even apart from the preemption clause, and its injunction against non-"identical" state "standards," "no lap belt" claims are impliedly preempted because they conflict with FMVSS 208 and the Safety Act.

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[20] This case is a good example: FMVSS 208 expressly grants, for safety reasons (*see* pp. 13-17, above), a choice among different types of safety restraint designs for automobiles, including the system Hyundai chose here. Section 1397(k) would preserve a common-law claim that a chosen restraint system was negligently manufactured or installed, because those subjects are not addressed by – and do not conflict with – FMVSS or its options. But § 1397(k) would not preserve a common-law claim, like the claim here, seeking to impose liability on a manufacturer for exercising the federally-granted option to install a passive restraint system design approved by NHTSA. That common-law claim conflicts with FMVSS 208 because it extinguishes a choice granted, as a matter of safety policy, by the federal government. *See, e.g., Perry v. Mercedes Benz*, 957 F.2d 1257, 1265 (5th Cir. 1992) (distinguishing failure-to-install-airbag claim from claim that particular airbag system was not properly designed, and holding latter claim not preempted).

Petitioners spend much of the Petition (Pet. 17-22) arguing that this Court's decision in *Cipollone* radically changed federal preemption law and precludes resort to implied preemption analysis in the face of an express preemption clause. But this Court unanimously rejected that proposition as "without merit" in *Freightliner Corp. v. Myrick*, 115 S. Ct. 1483, 1487 (1995); *see also Medtronic*, 116 S. Ct. at 2259 (rejecting express preemption argument but stating that tort claim might "be pre-empted under conflict pre-emption analysis"). The Court went on, in *Myrick*, to consider whether there was implied preemption in that case. 115 S. Ct. at 1488. The Minnesota Court of Appeals here could do – and did – no less.

At the time the 1988 Precis in this case was manufactured, FMVSS 208 gave Hyundai the option to install fully passive, automatic two-point safety belts with no manually-activated lap belts. That was not happenstance. FMVSS 208 permitted that flexibility and granted those options because Congress and the DOT judged that "flexibility in the development of technologies [would] improve automotive safety." *Baird*, 654 F. Supp. at 32; *Minton*, 1996 WL 402070, at *6. Indeed, FMVSS 208 "was specifically designed to give automobile manufacturers a choice among several options when providing restraint systems." *Pokorny*, 902 F.2d at 1123.

Hyundai exercised the option that federal law granted, and installed the federally-sanctioned fully passive two-point belt system in the Precis. Plaintiff's "no lap belt" claim, if allowed, would permit a jury to impose damages on Hyundai because it chose that option, and not a different passive restraint option. That state common-law standard imposing damages on Hyundai for choosing the federally-granted two-point belt option in effect would take away that option and, with it, the manufacturer's flexibility. It also would punish Hyundai, after the fact, for doing what FMVSS 208 authorized.

A state common law rule cannot take away the flexibility provided by a federal regulation, cannot prohibit

the exercise of a federally granted option, and cannot impose damages for doing what a federal act or regulation "authorized [one] to do." *Taylor*, 875 F.2d at 827; *accord Pokorny*, 902 F.2d at 1125; *Martinez*, 1997 WL 341786, slip op. at 3-4; *Minton*, 1996 WL 402070, at *6-7; *Cooper*, 1996 WL 272362, at *5-6; *Cellucci*, 676 A.2d at 260-61; *see also Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 155 (1982). In sum, "a state common law rule that would, in effect, remove the element of choice authorized in [FMVSS] 208 would frustrate the federal regulatory scheme," and so is "impliedly preempted." *Taylor*, 875 F.2d at 827.

Thus, allowing the common-law claim Petitioners propose would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Ouellette*, 479 U.S. at 491-92. That is what the Minnesota intermediate appellate court found, as over 100 courts have found before it. There is no error, and nothing to review, in that.

CONCLUSION

The Petition for a writ of certiorari should be denied.

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Respectfully submitted,

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